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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

No. _____

TWIN MANORS WEST OF MORTON GROVE CONDOMINIUM ASSOCIATION,

Petitioner,

vs.

EDWARD J. ROSEWELL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

I. Whether the requirement by the Illinois courts of a costly statistical analysis as a condition precedent to the enforcement of equal protection in real estate tax matters insulates from review discriminatory treatment and denies taxpayers Equal Protection and Due Process under the United States Constitution?

II. Whether the denial of the opportunity to Petitioner to prove that the Assessor's policies intentionally and systematically resulted in assessing Petitioner's property at a level grossly higher than property in the same class is in violation of Petitioner's rights to Equal Protection and Due Process of the United States and Illinois Constitutions?

PARTIES TO THE PROCEEDINGS

Petitioner, Twin Manors West of Morton Grove Condominium Association, represents the 33 homeowners/taxpayers who comprise the Twin Manors West of Morton Grove Condominium Association.

Respondent, Edward J. Rosewell, is the Treasurer and ex officio County Collector of Cook County, Illinois.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	3
JURISDICTION	3
PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS	4
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE WRIT:	
I. THE REQUIREMENT OF A COSTLY STATISTICAL ANALYSIS AS A CONDITION PRECEDENT TO THE ENFORCEMENT OF EQUAL PROTECTION IN REAL ESTATE TAX MATTERS DENIES TAXPAYERS EQUAL PROTECTION AND DUE PROCESS UNDER THE UNITED STATES AND ILLINOIS CONSTITUTIONS	16
A. DISCRIMINATORY TAXATION VIOLATES THE EQUAL PROTECTION CLAUSES OF THE UNITED	

Page

STATES AND ILLINOIS CONSTITUTIONS..... 16

B. THE REQUIREMENT OF PROVIDING A COSTLY STATISTICAL ANALYSIS WHICH OPERATES TO FORECLOSE A PARTICULAR TAXPAYER'S OPPORTUNITY TO BE HEARD VIOLATES DUE PROCESS..... 22

C. THE REQUIREMENT OF A COSTLY STATISTICAL ANALYSIS WHICH MAKES AVAILABLE TO SOME TAXPAYERS BUT DENIES TO OTHERS FULL ACCESS TO THE JUDICIAL PROCESS VIOLATES EQUAL PROTECTION..... 26

II. PETITIONER WAS DENIED THE OPPORTUNITY TO PROVE THAT THE ASSESSOR INTENTIONALLY AND SYSTEMATICALLY ASSESSED PETITIONER'S PROPERTY AT A LEVEL HIGHER THAN PROPERTY IN THE SAME CLASS IN VIOLATION OF PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS..... 30

CONCLUSION 39

APPENDICES:

A - Opinion of the Appellate Court of Illinois..... 1a

Page

B - Order of the Circuit Court of Cook County..... 29a

C - Order of the Illinois Supreme Court Denying the Petition for Leave to Appeal..... 43a

D - Report of Proceedings of Summary Judgment hearing on May 21, 1987..... 44a

E - Ill. Rev. Stat. ch. 120, Paras. 675, 716 (1981)..... 116a

TABLE OF AUTHORITIES

Cases:	Page
Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Co., West Va., 488 U.S. ____ (1989)..	20
Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).....	21
Application of Korzen, 63 Ill. App. 3d 835, 380 N.E.2d, 852 (1st Dist.1978).....	24
Boddie v. State of Connecticuit, 401 U.S. 371 (1971).....	22, 23, 27
Gagliardo v. Vodica, 58 Ill. App. 3d 1053, 374 N.E.2d, 1302 (2nd Dist. 1970).....	37
Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966).....	29
Hillsboro v. Crumwell, 326 U.S. 620 (1946).....	17
LaSalle Nat'l Bank v. County of Cook, 57 Ill.2d 318, 312 N.E.2d 252 (1974).....	24

Page

Lewis v. Illinois Inst. Technology, 50 Ill. App. 3d 418, 365 N.E.2d 1079 (1st Dist. 1977)..... 37

Little v. Streater, 452 U.S. 1 (1981)..... 23

People v. Yosell, 53 Ill. App. 3d 289, 368 N.E.2d 735 (1st Dist. 1977)..... 35

Rosewell v. Twin Manors West of Morton Grove Condominium Assn., 175 Ill. App. 3d 564, 529 N.E.2d 1104 (1st Dist. 1988)..... passim

Rosewell v. United States Steel Corp., 106 Ill. 2d 311, 478 N.E.2d 343 (1985)..... passim

Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U.S. 441 (1923)..... passim

Sunday Lake Iron Co v. Township of Wakefield, 247 U.S. 350 (1918). 18

Wicks v. Bank of Bellville, 56 Ill. App. 3d 222, 371 N.E.2d 1007 (5th Dist. 1977)..... 36

Constitutional Provisions and Statutes: Page

28 U.S. C. § 1257(3)..... 3

U.S. Const. amend. XIV, § 1, Cl. 4..... 4

U.S. Const. amend. XIV, § 1, Cl. 3..... 4

U.S. Const. amend. V, Cl. 2..... 4

Ill. Const. art. I, § 2..... 5

Ill. Const. art. IV, § 4(a)..... 5

Ill. Const. art. IX, § 4(b)..... 5

Ill. Rev. Stat. ch. 120, para. 501c-1 (1981)..... 6, 17

Ill. Rev. Stat. ch. 120, para. 675 (1981)..... 24, 116a

Ill. Rev. Stat. ch. 120, para. 716 (1981)..... 24, 121a

Real Property Assessment Classification Ordinance of Cook County, §§ 2, 3 (1980)..... 7, 17

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No. _____

TWIN MANORS WEST OF MORTON GROVE CONDOMINIUM ASSOCIATION,

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vs.

EDWARD J. ROSEWELL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner Twin Manors West of Morton Grove Condominium Association respectfully prays that a writ of

certiorari issue to review the denial by the Illinois Supreme Court of leave to appeal on February 1, 1989, and the judgment and opinion of the Appellate Court of Illinois entered in this proceeding on October 5, 1988.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois is reported at 175 Ill. App.3d 564, 529 N.E.2d 1104 (1st Dist. 1988), and appears herein as Appendix A. The order of the Circuit Court of Cook County is not reported, and appears herein as Appendix B.

JURISDICTION

The Illinois Supreme Court denied the petition for leave to appeal on February 1, 1989. That order appears herein as Appendix C. This petition was filed within 90 days from that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1, cl. 4.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "No state shall ... deprive any person of life, liberty or property, without due process of law; ..." U.S. Const. amend. XIV, §1, cl. 3.

The Due Process Clause of the Fifth Amendment to the United States Constitution provides: No person shall

... be deprived of life, liberty or property, without due process of law; ..." U.S. Const. amend. V, cl. 2.

The Due Process and Equal Protection Clause of the Illinois Constitution provides: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Ill. Const. art. I, §2.

The uniformity in taxation provision of the Illinois Constitution provides: "except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill. Const., art. IV, §4(a).

The uniformity of assessments within a real property classification

provision of the Illinois Constitution provides:

> Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed 2½ times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Ill. Const., art. IX, §4(b).

The statute that places condominiums in the same classification as single family residences provides:

> In counties with a population of 200,000 or more which classify real property, condominiums occupied by the

> owner as a residence for a minimum of six months during the year and created in accordance with the provisions of the "Condominium Property Act", as well as land with improvements owned and operated as a cooperative, shall be assessed on the same basis of assessment as single family residences in such counties.

Ill. Rev. Stat. ch. 120, para. 501c-1 (1981).

The Illinois statutory legal remedy for taxpayers is found in Ill. Rev. Stat. ch. 120, paras. 675, 716 (1981), and appears herein as Appendix F.

The relevant provisions of the Real Property Assessment Classification Ordinance of Cook County provides:

> Section 2.
>
> Real estate is divided into the following assessment classes:
>
> Class 2: Real estate used as a farm, or real estate usd for residential purposes when improved with a house, an apartment building of not more

than six living units, or residential condominium, a residential cooperative or a government-subsidized housing project, if required by statute to be assessed in the lowest assessment category.

Section 3.

The Assessor shall assess, and the Board of Appeals shall review assessments on real estate in the various classes at the following percentages of market value:

...

Class 2: 16%

...

Real Property Assessment Classification Ordinance of Cook County §§2, 3 (1980).

STATEMENT OF THE CASE

This case presents the question whether the Illinios courts may, in effect, impose an irrational and discriminatory wealth requirement to deny a taxpayer his constitutional rights to challenge an equal protection violation. The only avenue available to Cook County real estate taxpayers to challenge discriminatory treatment is by resort to the state courts. However, these courts have created a constitutionally offensive barrier. The imposition of a costly statistical analysis as a condition precedent to the judicial process operates to foreclose an ordinary taxpayer's opportunity to be heard. In effect the court has eliminated from

review discriminatory treatment of ordinary taxpayers by government officials.

Petitioner provided evidence that the Cook County Assessor assessed Petitioner's property at a rate of 15.35%, a level of assessment grossly higher than the 10.77% of comparable property. The Illinois trial and appellate courts refused to take cognizance of this constitutional violation only because of the absence of a county-wide statistical study of assessment rates - a practical impossibility for an individual taxpayer. The trial court denied Petitioner the opportunity to assert its constitutional rights to prove a violation of equal protection in uniformity of assessments by granting Respondent's motion for

summary judgment, holding that only evidence which included a county-wide study could be considered.

If the courts' opinions stand, taxpayers in Cook County would be discriminated against and would be left with no meaningful remedy to challenge serious discrimination in their property taxes. This was recognized by the trial judge at the time he rendered his opinion when he stated:

> [T]he cost to conduct a countywide assessment ratio would be quite expensive as opposed to conducting a local geographical study, thus it would seem to be fair to allow both the little guy and quote the homeowner to conduct a local assessment study ratio at a cost affordable to him.
>
> ... It is necessary that the objector compare the subject property to all of the properties of Cook County to insure uniformity and equality. Any assessment ratio study must be countywide to accomplish

> uniformity and equality. It is my opinion that this issue has never been decided by a higher court. The decision could be a hardship of the individual property owner, especially in Cook County ... who would want to base his argument on such a study, but the cost would be prohibit[ive]. (App. 34a-37a)

Cook County contains 1.3 million parcels of real estate and is the second largest taxing jurisdiction in the world. The position taken by the Petitioner below was that the expense of making a county-wide survey in Cook County is beyond the ability of the vast majority of taxpayers. The uncontradicted evidence in the record is that the minimum cost of a county-wide study would be $17,000. Only corporations and individuals of substantial wealth could undertake such a monetary burden and will do so only when the amount of taxes at

stake is sufficiently high to warrant such an expense.[1]

After exhausting the administrative remedies available, Petitioner sought judicial review of the Assessor's actions. Petitioner filed a specific tax objection in the Circuit Court of Cook County alleging that the 1981 real estate assessment and the resulting taxes levied against Petitioner were constructively fraudulent.

The unrebutted record in this case consists of three studies which establish the gross disparity between the assessment against the Petitioner and many other properties within the same

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[1]The total amount of taxes at issue in this case is approximately $20,000.00.

general area.[2] The Respondent filed a motion for summary judgment and presented no evidence in support of its motion. The trial court granted the Collector's [Respondent's] motion for summary judgment because Petitioner did not have the $17,000 study. The trial judge read into the record his decision which appears herein as Appendix B.

The constitutional issues of due process and equal protection were raised at the administrative level as well as the judicial level, as early as the pre-trial conference. The constitutional issues were again raised in Petitioner's Memorandum in Opposition to Collector's [Respondent's] Motion for

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[2]Petitioner's evidence is set forth in the reasons for granting the writ section of this writ.

Summary Judgment filed with the trial court on April 22, 1987.

The constitutional issues were for a third time raised at the summary judgment hearing on May 21, 1987. A transcript of the proceedings appears herein as Appendix D. The constitutional issues were also raised in Petitioner's brief and argument in the Appellate Court of Illinois and in Petitioner's petition for leave to appeal in the Supreme Court of Illinois.

The Appellate Court did not address the constitutional issues Petitioner raised because the court decided the Petitioner failed to provide the required county-wide statistical analysis as proof of non-uniformity. Petitioner contends that this requirement, necessary to challenge an

equal protection violation, is discriminatory and denies the Petitioner an adequate remedy at law in violation of the Equal Protection and Due Process clauses of the United States and Illinois Constitutions.

REASONS FOR GRANTING THE WRIT

I. THE REQUIREMENT OF A COSTLY STATISTICAL ANALYSIS AS A CONDITION PRECEDENT TO THE ENFORCEMENT OF EQUAL PROTECTION IN REAL ESTATE TAX MATTERS DENIES TAXPAYERS EQUAL PROTECTION AND DUE PROCESS UNDER THE UNITED STATES AND ILLINOIS CONSTITUTIONS.

A. DISCRIMINATORY TAXATION VIOLATES THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND ILLINOIS CONSTITUTIONS.

It has been well-established that "the equal protection clause of the Fourteenth Amendment protects the individual from state action which

selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." Hillsboro v. Cromwell, 326 U.S. 620, 623 (1946). This discriminatory treatment includes disparate assessment of comparable property subject to the same tax rate. Id. In the instant case, Petitioner claims its property was assessed and taxed considerably higher than other property within the same class.[3]

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[3]Petitioner's real estate consists of 33 individually owned condominium units. Under the Cook County real property assessment classification ordinance, condominiums are class 2 property and are to be assessed at 16% of market value. This is the same classification as single family residence. Ill. Rev. Stat. ch. 120, para. 501c-1 (1981); Real Property Assessment Classification Ordinance of Cook County, §§2, 3 (1980).

This Court has explicitly recognized that where an intentional, systematic, undervaluation by state officials of other taxable property of the same class occurs, a taxpayer's constitutional rights of due process and equal protection have been violated. See, Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350, 352 (1918). In Sunday Lake, this Court stated:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. (citation omitted)

Petitioner has evidence of intentional, systematic undervaluation by the Assessor of other taxable property in its same class, but has not been permitted to present this evidence at a trial because of the onerous requirement of providing a county-wide statistical analysis.

In Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U.S. 441 (1923) the taxpayer was assessed at a higher level of assessment than other local property. This Court found a violation of the equal protection clause and stated:

> The dilemma presented by a case where one or a few or a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the

> law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of the state statutes and constitutions, and of the equal protection clause of the Fourteenth Amendment... This court holds that the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. 260 U.S. at 446.

See also, Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Co., West Va., 488 U.S. ____ (1989).

The Illinois Supreme Court, in denying the Petitioner leave to appeal, violated its own recognition of the need for uniformity in taxation. In Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, 773 (1960) the Illinois Supreme Court stated that:

> Uniformity in taxation, as required by the constitution, implies equality in the burden of taxation, and this equality in burden cannot exist without uniformity in the basis of assessment as well as in the rate of taxation. (citation omitted) The rule of uniformity requires an equality of taxation in proportion to the value of the property taxed. It prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value.

Thus, the Assessor must assess all class 2 property at the same rate. To the extent the Assessor deviates from his

statutory obligation and subjects a taxpayer to a greater tax burden than others of the same class, the Assessor, as in this case, has discriminated against the taxpayer in violation of taxpayer's rights to equal protection.

B. THE REQUIREMENT OF PROVIDING A COSTLY STATISTICAL ANALYSIS WHICH OPERATES TO FORECLOSE A PARTICULAR TAXPAYER'S OPPORTUNITY TO BE HEARD VIOLATES DUE PROCESS.

It is well established that if a state law requires an individual to bring suit in state court to redress alleged grievances, absent a countervailing state interest of overriding significance, the individual must be given at a minimum a meaningful opportunity to be heard. Boddie v. State of Connecticuit, 401 U.S. 371, 377 (1971) (filing fee requirements for divorce actions cannot be used to preclude

individuals from exercising their constitutional rights). In Boddie this Court stated that "a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard." Id. at 380. See also Little v. Streater, 452 U.S. 1 (1981) (denying blood group testing in paternity suit because defendant lacked financial resources violated due process guarantee).

Although Illinois taxpayers have a statutory remedy[4] to challenge

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[4]The statutory legal remedy in Illinois provides that a taxpayer after payment under protest and exhaustion of administrative remedies, may file an objection to the collector's application to the Circuit Court for an order of sale of delinquent real estate taxes. The circuit court possesses the power to determine whether the assessment is correct. Ill. Rev. Stat. ch. 120, paras. 675, 716; LaSalle Nat'l Bank v. County

discriminatory treatment, the Illinois courts have in essence assessed a $17,000 cost requirement before allowing the taxpayer to have a meaningful opportunity to be heard. Thus, what appears on its face to be an adequate remedy in reality precludes taxpayers from exercising their constitutional rights to challenge a non-uniform assessment.

Petitioner acknowledges that Illinois courts will not review assessed valuations absent proof of actual or constructive fraud and that Petitioner has the burden to prove by clear and convincing evidence that the assessment is constructively fraudulent before the presumption of its correctness of the assessment is rebutted. Application of Korzen, 63, Ill. App.3d 835, 380 N.E.2d

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of Cook, 57 Ill.2d 318, 312 N.E.2d 252 (1974).

852 (1st Dist. 1978). Illinois courts have held that proof of actual or constructive fraud can only be established by evidence on a county-wide basis. Rosewell v. Twin Manors West of Morton Grove Condominium Ass'n, 175 Ill. App.3d 564, 529 N.E.2d 1104, 1106 (1st Dist. 1988). This costly requirement effectively bars a taxpayer from seeking judicial redress in violation of his constitutional rights and consequently sanctions a fraud.

This Court stated in Sioux City, when it found the taxpayer had no remedy, that:

> The conclusion ... reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of unassessed property in the taxing district.

360 U.S. at 446. As this Court pointed out in Sioux City, the state cannot impose upon a taxpayer the impossible burden of seeking an upward revision of the taxes of other members of the class in order to remove a discrimination. Likewise, the Illinois courts must not be permitted to deny the majority of Cook County real estate taxpayers the only remedy available to the taxpayers to assert their constitutional rights to challenge assessments in court because it is utterly impossible for them to pay the exhorbitant cost of a county-wide study.

C. THE REQUIREMENT OF A COSTLY STATISTICAL ANALYSIS WHICH MAKES AVAILABLE TO SOME TAXPAYERS BUT DENIES TO OTHERS FULL ACCESS TO THE JUDICIAL PROCESS VIOLATES EQUAL PROTECTION.

Mr. Justice Brennen, in his concurring opinion in Boddie, states that courts are:

> [B]ound to do equal justice under law, to rich and poor alike .... Where money determines not merely 'the kind of trial a man gets,'(citation omitted), but whether he gets into court at all, the great principle of equal protection becomes a mockery. Boddie at 125.

If the Illinois courts' requirement is permitted to stand, only the wealthy or large corporations with substantial taxes at risk will have the ability to fulfill the condition precedent imposed by Illinois case law in order to prove a violation of equal protection. It would be utterly impossible for the majority of Cook County real estate taxpayers to assert their constitutional rights to challenge their assessment in court.

The Illinois courts, by categorically requiring the county-wide study as a condition precedent to establishing constructive fraud necessary to shift the burden to the Assessor, discriminate against Cook County real estate taxpayers because of the enormous number of parcels of real estate in Cook County.[5] Producing a county-wide study is cost-prohibitive to the vast majority of taxpayers and not necessary to prove a particular assessment is discriminatory.

In order for taxpayers in Cook County to be afforded equal protection, it should be sufficient for a taxpayer to establish to the satisfaction of the court that his property has not been

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[5]As set forth above, Cook County is the second largest taxing jurisdiction in the world.

assessed on a uniform basis with any other property or group of properties. The requirement of a county-wide study shuts out all but the wealthy in challenging a discriminatory tax assessment, thereby denying the taxpayer due process and equal protection.

This Court in Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 670 (1966), held that "wealth or fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned." Like Harper, wealth or fee paying should have no relation to whether a taxpayer may provide proof of discriminatory treatment by the Assessor. Uniformity of taxation is too precious, too fundamental to be conditioned by a costly requirement

before evidence of a violation will be reviewed.

II. PETITIONER WAS DENIED THE OPPORTUNITY TO PROVE THAT THE ASSESSOR INTENTIONALLY AND SYSTEMATICALLY ASSESSED PETITIONER'S PROPERTY AT A LEVEL GROSSLY HIGHER THAN PROPERTY IN THE SAME CLASS IN VIOLATION OF PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS.

Petitioner was prepared to meet the standard required to overcome the presumption that the Assessor's assessment was correct. The standard of proof required to prove actual or constructive fraud is by clear and convincing evidence. Rosewell v. United States Steel Corp., 106 Ill.2d 311, 478 N.E.2d 343, 346 (1985). In United States Steel, the Illinois Supreme Court articulated the guidelines for a taxpayer to establish constructive fraud:

> Some guidelines have been established for the proof necessary to establish constructive fraud. Assessments that are disproportionately higher than those for similar property ... are indictive of constructive fraud. (citations omitted) Similarly, overvaluation may be so excessive, under some circumstances, as to justify the conclusion that it was not honestly made and, therefore, is constructively fraudulent. (citations omitted) Once the presumption of the validity of the assessment is overcome, it becomes incumbent upon the assessor to produce evidence to justify the assessment. (citations omitted) Moreover, a determination of whether the assessor has committed constructive fraud depends upon the facts and circumstances of each particular case. 478 N.E.2d at 346 (quoting, People v. Int'l. Business Mach. Corp., 89 Ill.2d 287, 298, 432 N.E.2d 867, 870-71 (1982)).

In the instant matter, Petitioner's evidence conclusively demonstrates constructive fraud on the Assessor's behalf under both of the

alternative tests enunciated in United States Steel: the instant assessments are disproportionately higher than those for similar Class 2 property; and the over-valuation is excessive.

Petitioner presented three different studies[6] to show that Petitioner's property was assessed higher than comparable property.[7] These showed a diference of more than 44%. Furthermore, one of these studies also

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[6]Respondent presented no evidence in support of its motion for summary judgment.

[7]Although, the Appellate Court found that Petitioner's level of assessment was slightly below the rate provided for by the ordinance and in accord with statutory provisions, this does not save the taxing scheme. This Court has held that the Equal protection clause protects Petitioner from disciminatory treatment which includes disparate assessment of comparable property in the same class. Sious City, supra at 20.

showed that the Assessor generally assessed condominiums higher than single family residences. This study was tested statistically and found to be valid to a statistical certainty.[8]

The assessment of Petitioner's property at such a level, grossly higher than other similarly situated property, is clear and convincing evidence of constructive fraud and under Illinois law rebuts the presumption that the Assessor acted properly. However, the trial court disregarded these studies because of the absence of a county-wide analysis, and subsequently granted the motion for summary judgment. By granting this motion, the trial court in effect ruled

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[8]The probability that there was a discrimination and that the results were caused by random error are less than 5 in 10,000 - "much less."

as a matter of law that the evidence Petitioner's studies would have shown was insufficient proof to statistically conclude that Petitioner's property was assessed grossly higher than other Class 2 properties in the county.

Like, the trial court the Appellate Court also disregarded Petitioner's studies because Petitioner failed to produce evidence of assessments of Class 2 property county-wide and consequently held that Petitioner "failed to show that its property was taxed disproportionately to the other class 2 property throughout the county." Twin Manors, at 1110. This requirement by the Illinois courts, that only a county-wide analysis will suffice to prove that an assessment is not uniform, is not only irrational but

ignores the common sense proposition that insofar as a township's assessment is not uniform, then the assessments cannot be uniform throughout the county.

Petitioner's property is located within Maine Township. Maine Township is located within Cook County. If Petitioner proves that its property is not assessed uniformly in Maine Township, then logically, Petitioner's property can not be assessed uniformly in Cook County. Therefore, it is not necessary to prove non-uniformity of assessments by providing a county-wide study.[9]

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[9] In criminal drug cases in Illinois, where a higher standard of proof exists than in this case, chemists are permitted to analyze only a small portion of a larger quantity and render an opinion as to the substance as a whole. People v. Yosell, 53 Ill. App.3d 289, 368 N.E.2d (1st Dist. 1977) (evidence supported a finding that defendant possessed over 200 grams of a controlled substance).

Petitioner was prepared to provide a statistical analysis that Petitioner's studies contained sufficient samples to prove that Petitioner's property was assessed grossly higher than other Class 2 properties in the county. Whether Petitioner's statistical evidence was sufficient to demonstrate constructive fraud was a question of fact for the trier of fact. The Court, because of its unnecessary requirement of a county-wide study, effectively closed its eyes to the uncontradicted facts before it. This also violates due process.

As a result by granting summary judgment,[10] the trial court denied

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[10]It is well-established in Illinois that the purpose of summary judgment is to dispose of those cases where no material questions of fact are at issue. Wicks v. Bank of Belleville, 56 Ill.

Petitioner its constitutional right to challenge its assessment on the basis of non-uniformity. Petitioner was denied any opportunity to prove that the Assessor's policies of intentionally and systematically assessing Petitioner's property at a level grossly higher than property in its same class subjected Petitioner to discriminatory treatment. The Illniois courts costly and

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App.3d 222, 371 N.E.2d 1007 (5th Dist. 1977). The evidence is strictly construed against the moving party and is liberally construed in favor of the opponent. Lewis v. Illinois Institute of Technology, 50 Ill. App.3d 418, 365 N.E.2d 1079 (1st Dist. 1977). Summary judgment should be granted only when the legal and factual right is clear and free from doubt. Gagliardo v. Vodica, 58 Ill. App.3d 1053, 374 N.E.2d 1302 (2nd Dist. 1970). Therefore, because Petitioners evidence stands unrebutted and must be strictly construed against the Respondent and liberally construed in favor of the Petitioner, summary judgment here is trantamount to directing a verdict against a party who has proven his case to a 99.95% certainty.

unnecessary requirement of a county-wide study as a condition precedent to the enforcement of equal protection in real estate tax matters effectively sanctions such discriminatory treatment. Equal protection and due process require at a minimum that the trial court be required to evaluate Petitioner's objection to its tax assessment on its merits.

CONCLUSION

The imposition of a costly and irrational condition precedence to the enforcement of equal protection perpetuates the discriminatory treatment and must not be sanctioned. The owner of an $80,000 condominium should not be denied his opportunity to be heard because he does not possess the financial resources necessary to pay for a $17,000 statistical study. This denial certainly violates due process and equal protection.

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Illinois

Appellate Court and the denial by the Illinois Supreme Court of leave to appeal.

Respectfully submitted,

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April 28, 1989

APPENDIX A

529 N.E.2d 1104
175 Ill.App.3d 564
125 Ill.Dec. 28

In the Matter of)
)
The Application of the COUNTY)
TREASURER AND EX-OFFICIO)
COUNTY COLLECTOR OF COOK COUNTY,)
for Order of Judgment and Sale)
Against Real Estate Returned)
Delinquent for the Non-Payment)
of General Taxes for the Year)
1981 and for Judgment Fixing the)
Correct Amount of any Tax Paid)
Under Protest for the Year 1981)
(Edward J. Rosewell,)
)
Applicant-Appellee,)
)
v.)
)
Twin Manors West of Morton Grove)
Condominimum Association,)
)
Objector-Appellant.)

No. 87-2018.
Appellate Court of Illinois,
First District, Third Division.
Oct. 5, 1988.
Rehearing Denied Nov. 4, 1988.

Rosenthal and Schanfield, Chicago, for objector-appellant.

Richard M. Daley, Chicago, (Joan S. Cherry, Mark R. Davis and Kevin P. Burke, of counsel), for applicant-appellee.

Justice FREEMAN delivered the opinion of the court:

Objector-appellant, Twin Manors West of Morton Grove Condominium Association (Twin Manors), appeals from the trial court's granting of a motion for summary judgment in favor of applicant-appellee, Edward J. Rosewell, the Cook County Collector collector). On appeal Twin Manors asserts that the collector assessed certain real estate at a disproportionately higher rate than comparable real estate located in the same township as the subject property, in violation of the equal protection of the law.

Twin Manors defines the underlying issue of the instant appeal as

what is the proper geographic area in Cook Count for purposes of proving a violation of equal protection in real estate tax matters. Twin Manors contends that the proper geographic area is the township. We hold that the proper geographic area is the county and affirm the judgment of the circuit court.

The record indicates the following. Twin Manors is a condominium association which represents the 33 homeowners/ taxpayers who comprise the Twin Manors condominium association. The real estate is located at 7730 Dempster Street, Morton Grove, Illinois. The collector filed the annual application for order of judgment and sale against real estate returned delinquent for the year 1981, and for judgment fixing the amount of tax paid under protest. Twin Manors filed a specific tax objection pursuant to section 235 of the Revenue Act of 1939

(Ill. Rev. Stat. 1981, ch. 120, par. 716), alleging that the 1981 real estate assessment and taxes are constructively or actually fraudulent. After discovery and pretrial conferences, the collector filed a motion for summary judgment. A hearing was held and the circuit court entered its order granting the collector's motion for summary judgment and fixing the amount of the objector's real estate taxes for the year 1981.

At the hearing, the parties presented evidence indicating the following. Cook County is divided into 38 townships. The townships are grouped into four assessment districts (quadrants). Twin Manors, real estate is located in Maine Township, which is a part of District 2, the northwest quadrant of the county. Each year the county assessor reassesses one of the districts. In 1981

the assessor performed a quadrennial reassessment of District 2.

Under section 20c-1 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120, par. 501c-1), condominiums which are owner-occupied as residences for a minimum of six months during the year are assessed on the same basis as single-family residences. According to the Cook Count Real Property Assessment Classification Ordinance (Cook County Real Property Assessment Classification Ordinance §§ 2, 3 (1980)), single-family residences are categorized as class 2 and are assessed at 16% of fair market value.

The 1981 real estate assessment of the subject property was $402,701 and the real estate tax was $59,152.95. Twin Manors calculated, based on the 16% level of assessment provided for in the ordinance, that the condominium units were

valued by the county assessor based on a market value of $2,516,881 [$402,701 = 16% of $2,516,881.]. Twin Manors itself valued the units at $2,688,000 as of January 1, 1981, based on sales of the units during the time period from 1977 to 1981. By comparing the market value it found [$2,688,000] with the market value calculated from the assessment amount [$2,516,881], Twin Manors calculated that the condominium units were assessed at approximately 94% of market value.

Twin Manors presented the results of three studies which allegedly show that other residential property within Maine Township was assessed at only 60% of market value. The first study indicates that the assessor assessed other condominiums located in Morton Grove at 10.78% of market value or 67% of full value. The second study analyzes the 459 sales used in the State of Illinois

Department of Revenue 1981 Sales/Ratio Study. This study shows that of 459 class 2 parcels sold in Maine Township in 1980, only 9 were assessed at the 16% level of assessment or higher, while the remaining 450 parcels were assessed at a level of assessment lower than the 16% ordinance level. The third study analyzes the sale of 178 single-family homes and condominiums located in Morton Grove during 1981. Of these properties, none was assessed at the ordinance level of assessment. The highest level of assessment was 14.89% of market value, and the median level of assessment was 10.77%.

Twin Manors also pointed to the Illinois Department of Revenue's "Assessment/Sales Ratio Study Findings 1981" publication, which concludes that the median level of assessment for class 2 property in Maine Township for 1981 was 10.51% of market value. Twin Manors

calculated that its own property was assessed at 15.35% of market value. Twin Manors summarized the evidence it presented as follows:

	STUDY	LEVEL OF ASSESSMENT [%]
1.	Morton Grove Condominiums	10.78
2.	Maine Township-Class 2	10.88
3.	Morton Grove-Class 2	10.77
4.	State of Ill. Dept. of Revenue 1981 Study	10.51
5.	Taxpayer's propert	15.35

Twin Manors states that the large size of Cook Count and the great number of transfers of real estate in Cook Count made a full, count-wide study of class 2 property not feasible.

Twin Manors asserts that the evidence shows clearly and convincingly that the subject real estate was assessed at a higher level than comparable properties located in the same township. Twin Manors asserts that the evidence therefore is sufficient to rebut the presumption that the assessment was

correct and shifts the burden of going forward with evidence to the collector.

Twin Manors asserts that the township level of assessment should be used in Cook Count. Twin Manors cites a number of cases which deal with the issues of disparity of taxation within a taxing district and the competency and weight of evidence in tax assessment cases. Only one of the cited cases involves property in Cook County. (Apex Motor Fuel Co. v. Barrett, (1960), 20 111.2d 395, 169 N.E.2d 769.) None of the cases stands for the proposition asserted by Twin Manors, that the township is a proper level of assessment. However, Twin Manors contends that case law should be applied to the facts of the instant case with a view towards the unique characteristics of Cook County, including its very dense population and the large number of real estate parcels within its borders. Twin

Manors contends that the burden on the taxpayer to show disproportionate assessment at the county level is too heavy. Further, taxation is properly a local function, and taxpayers should be able to compare assessments among their neighbors within their own town to determine whether the assessments are being made uniformly.

An analysis of a taxation of property matter properly begins with a review of the pertinent provisions of the constitution. Section 4(b) of Article 9 of the Illinois Constitution (Ill. Const. 1970, art. 9, § 4(b)) provides:

Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation. Any such classification shall be reasonable and

assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county. (Emphasis added.)

The constitution thus provides for assessments to be made at the county level. The constitution grants the power to the legislature to classify property within a county, and it requires that property within a certain class in a county be assessed uniformly with other property in the same class within the county. The supreme court in Apex Motor Fuel Co. v. Barrett (1960), 20 Ill.2d 395, 169 N.E.2d 769, discussed the

constitutional requirement of uniformity. The court stated that "[uniformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401, 169 N.E.2d 769; see also Stephens v. Property Tax Appeal Board (1976), 42 Ill.App.3d 550, 1 Ill.Dec. 229, 356 N.E.2d 355.) The court in Apex Motor Fuel further stated:

> * * * The rule of uniformity * * * prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [Citation.]
>
> Within this constitutional limitation, however, the General

> Assembly has the power to determine the method by which propert may be valued for tax purposes. * * * The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test. [Citation.] Apex Motor Fuel, 20 111.2d at 401, 169 N.E.2d 769.

Among the cases cited by Twin Manors on appeal, the only one which addresses an issue related to the proper geographic area for taxation purposes is People ex rel. Kohorst v. Gulf, Mobile & Ohio R.R. Co. (1961), 22 I11.2d 104, 174 N.E.2d 182. The court in Kohorst held that under the circumstances presented,

the proper ratio of underassessment to be applied, in order to provide a proper refund to the taxpayer of discriminatory taxes, was the county ratio rather than the township ratio. (Kohorst, 22 Ill.2d at 114, 1;4 N.E.2d 182.) Twin Manors points nut that the court in Kohorst also stated, however, that under the facts of that case, the use of the township ratio "would produce substantially the same result" as would the use of the county ratio. Kohorst, 22 Ill.2d at 114, 174 N.E.2d 182.

The collector responds that courts which previously addressed assessment ratio arguments all refer to the level of assessment throughout the county rather than in any particular township. Further, People ex rel. Kohorst v. Gulf Mobile & Ohio R.R. Co. (1961), 22 Ill.2d 104, 174 N.E.2d 182, cited by Twin Manors, in which the court

looked to the county ratio rather than the township ratio for assessment purposes, arose out of a downstate county where assessments generally are made at the township level. The collector asserts that in Cook County, where assessments originate at the county level, the case is even stronger for using the county level of assessment.

Our review of case law indicates that the courts look to the "assessment level for the county as a whole" (Will County Board of Review v. Illinois Property Tax Appeal Board (1981), 100 Ill.App.3d 506, 55 Ill.Dec. 864, 426 N.E.2d 1238) in order to determine whether the property at issue is being assessed in accord with the constitutional guarantees of equality and uniformity of taxation (Apex Motor Fuel Co. v. Barrett (1960), 20 Ill.2d 395, 169 N.E.2d 769; Givens v. Illinois Property Tax Appeal

Board (1980), 84 Ill.App.3d 218, 39 Ill.Dec. 842, 405 N.E.2d 821). Further, in determining whether to use a township or county ratio of assessment, the court in People ex rel. Kohorst v. Gulf Mobile & Ohio R.R. Co. (1961), 22 Ill.2d 104, 174 N.E.2d 182, stated that, under the circumstances presented, "considerations of practicality dictate the use of the county ratio." (Kohorst, 22 Ill.2d at 114, 174 N.E.2d 182.) The parties to the instant appeal have raised considerations of practicality regarding the proper level of assessment for taxation purposes. A discussion of those considerations follows later in this opinion.

Twin Manors also contends that the assessment process effectively revolves around the township, in that the notice requirements and other provisions of the Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120. par. 482 et seq.)

reference townships. For instance, section 43 of the Act provides that "the assessment districts shall follow township lines." (Ill. Rev. Stat. 1981, ch. 120, par. 524.) Section 104 requires that quadrennial assessments be published within a "township assessment district" if a newspaper of general circulation is published within that district. (Ill. Rev. Stat. 1981, ch. 120, par. 5A5.) Section 115 provides for the correcting of assessments "by towns or taxing districts." (Ill. Rev. Stat. 1981, ch. 120, par. 596.) Section 117 states that complaints by taxpayers and certificates of correction by the count assessor "shall be filed by townships with the board of appeals." (Ill. Rev. Stat. 1981, ch. 120, par. 598.)

The collector responds that, according to statute, Cook County is required to equalize real estate

assessments only on an inter-count basis, and not within the count itself. (Ill. Rev. Stat. 1985, ch. 120, par. 627.) In contrast, for counties with less than one million inhabitants, statutory provisions require intra-count equalization. (Ill. Rev. Stat. 1985, ch. 120, pars. 576a, 589(5).) Under sections 146, 148a, 149, and 151 of the Revenue Act of 1939 (Ill. Rev. Stat. 1985, ch. 120, pars. 627, 629a, 630, 632), the Department of Revenue is authorized, regarding certain counties, to equalize assessments among townships in the same count. The collector contends that those statutory sections, however, do not apply to counties which elect a county assessor, as does Cook County.

Additionally, the collector asserts that in Cook County, county officials perform the duties of assessing, imposing, and collecting real estate taxes. The county assessor is the elected

official responsible for assessing real estate in the county, and the county collector is an elected official to collect the taxes. In contrast, township officials in the less populous downstate counties perform the duties of assessing and collecting taxes. Those counties do not elect county assessors. We find that the statutory sections cited by Twin Manors (Ill. Rev. Stat. 1981, ch. 120, pars. 524, 585, 596, 598) do not support the contention that assessments are to be made according to township. The cited sections provide for: (1) the division of counties with a population of at least one million into four assessment districts, along township lines (Ill. Rev. Stat. 1981, ch. 120, par. 524); (2) the publication of quadrennial assessments in newspapers of general circulation within a "township assessment district" (Ill. Rev. Stat. 1981, ch. 120, par. 585); (3) the

correction or revision of assessments "by towns or taxing districts" (Ill. Rev. Stat. 1981, ch. 120, par. 596; and (4) the filing of complaints by taxpayers by townships for review by the board of appeals (Ill. Rev. Stat. 1981, ch. 120, par. 598).

These statutory provisions set forth practical guidelines for carrying out the assessment process. The cited provisions do not set forth the criteria for the computation of assessments nor do they determine the classification of property. Section 43 (Ill. Rev. Stat. 1981, ch. 120, par. 524), which provides for the division of Cook County into four assessment districts, does so in order to "divide, as near as may be, the work of assessing the real estate in the count into 4 equal parts." (Ill. Rev. Stat. 1981, ch. 120, par. 524.) The language of section 43 indicates that assessments are made by county, but that for practical

purposes, counties with large populations are divided into four assessment districts. For instance, for the larger counties, the assessor's office is able to divide the work of publication of the quadrennial assessments so that it publishes the assessments for only one quadrant of the county per year. (Ill. Rev. Stat. 1981, ch. 120, par. 524.) We agree with the collector that the statute indicates that a county-wide level of assessment is to be utilized.

Twin Manors also asserts that an analysis of the real estate tax levied against a Maine Township homeowner indicates that most of the taxing bodies are local and only 16% of the homeowner's tax bill is paid to the count. The remaining percentage of the homeowner's tax is paid to Maine and Niles Townships. Therefore, Twin Manors asserts, it would be reasonable to look to the township

level of assessment for determining uniformity of taxation.

Twin Manors also cites Poffenberger v. Board of Revision (1977), 54 Ohio App.2d 89, 375 N.E.2d 65, in which the Ohio appellate court held that the uniformity requirement of the Ohio Constitution was violated where the county assessor, during a sexennial reassessment, reassessed only those parcels which were sold around the time of the reassessment, and failed to reassess other comparable parcels which had not been sold since the prior sexennial reassessment. The Ohio court found that the objector suffered discrimination as a result of the unequal taxation. (Poffenberger, 54 Ohio App.2d at 93, 375 N.E.2d 65.) Twin Manors points out that the Ohio court found sufficient the evidence presented by the objector of seven comparable land parcels located in close proximity to the land in question.

Poffenberger, 54 Ohio App.2d at 90, 95, 375 N.E.2d 65.

The collector responds that class 2 property is located throughout Cook County and not just in certain townships. Further, the collector contends that the more than 600 taxing bodies in Cook County generally overlap township lines. Twin Manors pays taxes to 15 different taxing bodies. Four of those taxing bodies are located throughout Cook County, and several others overlap into a number of different townships. The collector asserts that 69% of Twin Manor's tax burden is accounted for by taxing bodies extending beyond Maine Township's boundaries. A comparison of properties only within Maine Township, therefore, is insufficient.

Further, the collector asserts that the Revenue Act should not be strictly interpreted if the result would

be to make it practically impossible for taxing officials to assess, levy, and collect taxes. The collector asserts that the use of a township level of assessment would make it practically impossible for the Cook County assessor to perform his duties. To require a uniform county-wide assessment based on an analysis focused on one township would create an impossible requirement.

[1,2] The presumption in tax objection cases is that the assessing officers performed their duty. (People ex rel. Nordlund v. Lans (1964), 31 Ill.2d 477, 202 N.E.2d 543.) Constructive fraud must lie proven by clear and convincing evidence. (People ex rel. Costello v. Lerner (1977), 53 Ill.App.3d 245, 250, 11 Ill.Dec. 368, 368 N.E.2d 976.) The Cook County Real Property Assessment Classification Ordinance provides for an assessment of class 2 property, such as

the subject property, at 16%, the lowest assessment rate of any class. Cook County Real Property Assessment Classification Ordinance §§ 2, 3 (1980).) The evidence presented by Twin Manors indicates that its property was assessed at 15.35% of its fair market value, a rate slightly below the rate provided for by the ordinance. The assessment is in accord with statutory provisions.

[3] Nor do we find that Twin Manors presented sufficient evidence to indicate that the statute fails to meet the constitutional requirement of uniformity. The constitutional requirement of uniformity is met where: (1) the intent of the statute is to adjust the burden with a reasonable degree of uniformity; and (2) the effect of the statute in its general operation is that it adjusts the burden with a reasonable degree of uniformity. Apex Motor Fuel Co.

v. Barrett (1960), 20 Ill.2d 395, 401, 169 N.E.2d 769.

[4] Twin Manors apparently does not challenge the statute based on the first part of the constitutional test, the intent to adjust the tax burden with reasonable uniformity. Twin Manors' argument instead focuses on the effect of the statute specifically on residential property within Maine Township in Cook County. Twin Manors asserts that the disparity in taxing levels between other properties within Maine Township which were assessed at levels between 10.51% and 10.88%, and its own property, assessed at 15,35%, constitutes constructive fraud.

We find, however, that Twin Manors has failed to present sufficient evidence to indicate that the effect of the statute in its general operation does not adjust the tax burden with reasonable uniformity. Twin Manors' evidence is

limited to three studies of property located within Maine Township. Twin Manors failed to present evidence of assessments of residential (class 2) property in Cook County outside of Maine Township. Therefore, it has failed to show that its property was taxed disproportionately to the other class 2 property throughout the county. (See Will County Board of Review v. Illinois Property Tax Appeal Board (1981), 100 Ill.App.3d 506, 55 Ill.Dec. 864, 426 N.E.2d 1238.) Even if it was unable to present a comprehensive study of county-wide assessments of class 2 property, Twin Manors might have produced some evidence of assessments of class 2 property within areas or townships in the county other than Maine Township. Further, we agree with the collector that a township level of assessment likely would produce

insurmountable practical problems for the assessor.

[5] In any event, even if the studies show disparity in the levels of assessment of residential property within the same township, we cannot find that the evidence shows that a township level of assessment, rather than a county-wide level, is the proper one. We believe that the decision to utilize a township rather than a county level of assessment is within the authority of the legislature. Therefore, we find that the trial court's granting of the collector's motion for summary judgment was proper.

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

JUDGMENT AFFIRMED.

APPENDIX B

IN THE CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN THE MATTER OF THE APPLICATION OF THE COOK COUNTY TREASURER FOR NON-PAYMENT OF 1981 GENERAL REAL ESTATE TAXES, ETC.,	)	No. 81 Specific Objection 359
TWIN MANORS WEST OF MORTON GROVE CONDOMINIUM,	)	
Objector.	)	

REPORT OF PROCEEDINGS had at the hearing in the above entitled cause, before the Honorable MICHAEL MURPHY, Judge of said court, on Thursday, the 28th day of May, A.D. 1987, at the hour of 10:00 o'clock a.m. P R E S E N T:

MR ALLEN A. LEFKOVITZ
ROSENTHAL AND SCHANFIELD,

appeared on behalf of the Objector, MR. MARC DAVIS and MR. KEVEN BURKE, Assistant State's Attorneys, appeared on behalf of the Collector.

THE CLERK: 81 objection 359.

THE COURT: This is just for a decision.

MR. BURKE: For the record, Keven Burke, Assistant States Attorney for the objector.

THE COURT: The issue that was presented is the county's motion for summary judgment is really a narrow issue, but has far reaching implications. The issue is whether the assessment ratio study which purports to show the true level, the class two property in Main Township can be the basis for finding that the subject property assessment is constructively fraudulent. The wider, broader question is what is the property geographical area for the ratio study. Not at issue in the motion is the validity

of the actual study conducted by the objector. Both the objector, Twin Manors and county have cited a number of cases, a great number of cases which they each contend support their conclusion. The county that the proper geographical area is not the township, and there should be the county. The objector that the geographical area should be the township and,in fact, in times argue they may even be a smaller or perhaps even a larger geographical area. The arguments by both counsel are excellent. They argued why the cited cases should apply, and they also argued why the opponent's case should not apply.

After reading the cases cited in the authorities in the area, I can find no persuasive authority to dictate the proper geographical area. All the cases could be interpreted rather elastically to support one side or the other, especially as it

applies to Cook County. The question needs, I feel, to be resolved, should be resolved is not in the circuit court where it started. The objector, Twin Manors'strong argument is one that is the basis not only the cases cited, but also the very practical argument that the property owner should be afforded the opportunity to compare his or her property to that of his neighbors. Both the county assessor's office and Cook County Board of Appeals encourages such comparison and granted they are encouraged to find similar properties at the same number square foot, same number of livingrooms, fireplaces, garages, etc. If they find such similar properties in their community, then the assessed evaluation of the subject property with their own property, it would be compared to the sample of the like property. If all are

equal, they should be appraised equally and taxed equally.

The taxpayer is not encouraged by either the assessor's office to conduct a mini or for that matter a comprehensive sales ratio or assessment ratio study using the local properties. It would not be difficult or expensive to conduct such a study. However, for example, a homeowner could easily identify the home sold in their area, could identify the value as determined by the assessor, if he could show by such a study his own mini study that all single family homes for instance in the area are appraised or assessed at80 percent of the fair market value and his is appraised or assessed at a hundred percent and either of the other properties should be increased by 20 percent or his should be decreased by 20 percent. Although the state's attorney's office disputed it. Granted this is a summary

judgment, I wanted to make the record clear at least my view on certain issues.

I am recognizing the factual issue is in dispute. At first it seems to be fair what the objector is saying. The three most important things from everything read or can be understood about evaluation of property, especially residential property such as condominium units which are at issue here, the three most important things are location, location, and location. That approach would be keeping with such a principle. There was a practical issue based by the court concerning the cost of a countywide assessment ratio where again this is a factual issue that's disputed and not properly the subject matter of this motion. I will note initially if it has to be that most likely would be that the cost to conduct a countywide assessment ratio would be quite expensive as opposed

to conducting a local geographical study, thus it would seem to be fair to allow both the little guy and quote the homeowner to conduct a local assessment study ratio at a cost affordable to him.

I will note also most other counties that such a study could be done at a lesser cost both to the owner and to the county. Cook County is unique. It was brought out in the argument by counsel rather well. Thus, for these reasons and probably others, it would seem fair to allow a localized assessment ratio study. It is not encouraged or allowed by the county or by the courts why.

Counsel for the county has cited numerous cases which support their contention that the proper geographical area is the county. I said that none of the cases are persuasive. I do believe the majority of the case law cited by both counsel would seem to support the county's

position that first the issue has never been decided. It would support the county's position that the proper geographical area is the county, although this has never been divided for Cook County. The cases that support that position and note the assessor however an elected official, it is elected countywide as such, he has a duty to compare properties countywide to insur equality and uniformity. If through some error perhaps or oversight, the practice of his personnel create a pocket of underassessed or overassessed properties, this mistake should not be perpetuated. If most of the properties in the local geographical area is underassessed compared to the remainder of the properties in the county, this mistake should be corrected. Either the rest of the county property should be reduced or the localized property should be increased to allow a township

assessment ratio study or local assessment ratio study could perpetuate an error of the assessor.

Here, in fact, if all of the properties other than the subject property at Main Township were assessed at 80 percent of true market value and the objector approves that the subject property was appraised or assessed at a hundred percent, that in itself would be insufficient. It is necessary that the objector compare the subject property to all of the properties of Cook County to insure uniformity and equality.- Any assessment ratio study must be countywide to accomplish uniformity and equality. It is my opinion that this issue has never been decided by a higher court. The decision could be a hardship of the individual property owner especially in Cook County who would want -- as a base who would want to base his argument on

such a study, but the cost would be prohibited. But this is an important issue. The objector prevails on appeal, this could change the properties as they are appraised by the county assessor.

I believe the case law supports the decision either made or making that other interpretations could be had of those cases, and I hope that the higher courts would be able to examine and decide the issue. If not, then perhaps other judge both here and county and downstate could decide on any number of geographical areas, and that also defeat the equality and uniformity that we all pursue. For the reasons stated, the motion for summary judgment will be granted. Do you have any questions?

MR. LEFKOVITZ: No, your Honor.

THE COURT: Any questions?

MR. BURKE: No, your Honor, except do you want the order drawn to form

the findings or just say summary judgment is granted?

THE COURT: Keep it simple in the order. I think if you have any questions, this is the time to ask them so you can come back and ask them. I would like -- I hope you are going to resolve the issue. I don't know if your clients can afford it.

MR. LEFKOVITZ: That s the problem. That's the problem with the entire proceeding. In order to allow my clients to afford themselves of their rights under equal protection and due process, it seems the court as well as the state's attorney putting on a burden which is basically taking away any rights they have.

THE COURT: I realize the decision. I think one of the reasons I made the decision is the fact that the judges could decide it different ways. In

the meantime until the higher court resolves it, you would have any number of geographical area. The more conservative approach would be to go countywide.

I also believe the pocket argument is very persuasive. I know you disagree. Your clients disagree strongly. I would like to see the appeal. As a homeowner, any other homeowner, I know they would want you to be on it, you would have to face the argument of constructive fraud.

MR. LEFKOVITZ: That's true that may be pertinent for small homeowners, and every property owner in Cook County whether they are a homeowner or owner of an apartment building, it really doesn't make a difference in terms of the hurdles which must go over, come in order for them to be afforded their rights. It seems that the court's decision at this time even places a greater impediment in

placing the taxpayer or objector in the posture of the assessor and basically saying that in order for us to prove the assessor is wrong, we have to basically do the assessor's job. That's to performa sales ratio study countywide, and I will have to confer with my clients and determine what posture they are going to take.

THE COURT: As far as the order goes, if I am drafting the order, it is very simple. If you want a more complicated order, you can prepare a more complicated order. I think the transcript is very brief the way it is now.

MR. BURKE: Thank you, your Honor.

THE COURT: Do you have any questions?

MR. BURKE: No.

THE COURT: Thanks. I enjoyed the issue. I really think it is important. You do have a big burden. Once you go beyond constructive fraud, that is another issue. It is important to be able to have that the fact I suspect the assessor's office may even hear such arguments.

(Which were all the proceedings had in the above-entitled cause.)

APPENDIX C

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, Illinois 62706
(217) 782-2035

February 1, 1989

Rosenthal and Schanfield
Attorneys at Law
55 East Monroe Street,
Suite 4620
Chicago, Illinois 60603

No. 68008 -In the Matter of the Application of the County Treasurer and Ex-Officio County Collector of Cook County, etc. (Edward J. Rosewell, respondent, v. Twin Manors West of Morton Grove Condominium Association, petitioner). Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 23, 1989.

APPENDIX D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN THE MATTER OF THE APPLICATION OF THE COOK COUNTY TREASURER FOR NON-PAYMENT OF 1981 GENERAL REAL ESTATE TAXES, ETC.,	)	
TWIN MANORS WEST OF MORTON GROVE CONDOMINIUM,	)	No. 81 Specific Objection 359
Objector.	)	

REPORT OF PROCEEDINGS had at the hearing in the above entitled cause, before the Honorable MICHAEL MURPHY, Judge of said court, on the 21st day of May, A.D. 1987, at the hour of 10:00 o'clock a.m.

P R E S E N T:

MR. ALLEN A. LEFKOVITZ, ROSENTHAL AND SCHANFIELD,

appeared on behalf of the Objector;

MR. MARC DAVIS and MR. KEVEN BURKE, Assistant State's Attorneys,

appeared on behalf of the Collector.

Sandra L. Middleton, CSR, RPR,
Official Court Reporter
County Division
Circuit Court of Cook County

THE CLERK: 81 Specific Objection 359.

MR. BURKE: Morning, your Honor, Keven Burke, assistant state's attorney for the collector.

MR. DAVIS: Marc Davis, assistant state's attorney for the collector.

MR. LEFKOVITZ: Allen A. Lefkovitz of Rosenthal and Schanfield on behalf of the objector.

THE COURT: Let me make sure I have everything. That's the only thing he submitted as far as this issue goes?

MR. LEFKOVITZ: Correct.

THE COURT: I want to make sure or it could possibly be something further. This is your last filing, is that right?

MR. BURKE: That's correct.

MR. LEFKOVITZ: I believe we were not given an opportunity to file a response to the reply, so the only brief which was to be filed was our first memorandum.

THE COURT: You may have more opportunity, but let's proceed today.

MR. DAVIS: You have the original motion and memorandum, too; do you not?

THE COURT: Yes. I have my copies, the court's copies. Yours I marked up. The court's copies of the original memorandum in support and the original motion for summary judgment. I have them all. I will make copies to clean up the court's copies. Do I have everything? Do you want to proceed counsel?

MR. BURKE: This is our motion for summary judgment. This is a specific objection case, and as in all specific objections, the collector has made a prima facie case by filing his application for judgment. It is the objector's burden to prove by clear and convincing evidence that the assessment is constructively fraudulent.

This case is somewhat unusual in that it is not your typical specific objection where the objectoris alleging that his property is over valued because based on an appraisal or income approach or sale, they are instead alleging that they were paying too much taxes, because other property owners in Maine Township were not paying enough. In other words, they are alleging that other property owners in Maine Township were not assessed at 16 percent.

It is our position that the objector's evidence which consists solely of sales ratio studies or assessment ratio studies of Maine Township are not sufficient for a finding of constructive fraud.

THE COURT: Let me interrupt, if I could, if you don't mind.

MR. BURKE: No, your Honor.

THE COURT: What you are talking about is paying 16 percent, another way of looking at it, for instance, is everyone is paying 80 percent, the assessment for taxes based upon 80 percent of the true market value as opposed to 100 percent of the true market value, is that right?

MR. BURKE: I think -- Cook County ordinance required class two property be assessed at 16 percent, and they are alleging that it is at something lower 10 or 11.

THE COURT: It starts at the true market value?

MR. BURKE: Yes.

THE COURT: Proceed.

MR. BURKE: It is the collector s position that the issue raised by our motion for summary judgment is an assessment ratio case. What is the appropriate geographical level for comparing levels of assessment. We contend that the appropriate level is the countywide level of assessment. The objector contends that it is the township level of assessment.

In our brief that we filed with the court, wecited the number of cases that support the use of county widelevel of assessment. I think the practicalities of the situation also support the use of the countywide. The number of cases we cited refer to the use of countywide level of assessment. One case in particular,

Cohorse v. GM & O Railroad Company, 22 Il. 2nd. 104, 1961 is directly on point. That case addresses the issue of which level of assessment should be applied. That issue was whether to apply the state level assessment, the county level of assessment, or the township level of assessment. The Supreme Court after addressing all three levels held that the countywide level of assessment should be applied.

We believe that case is directly on point and is controlling here. Also, the practical reasons I think is using the countywide level of assessing.

The essence of the objector's argument is that they are paying too much, because their neighbors are not paying enough Who are their neighbors, though. Their neighbors are not restricted to the taxpayers in Maine Township. Their neighbors for tax

purposes could be found throughout the county. The affidavit of Barbara Borell, which we attached to our reply memorandum establishes that 69 percent of the objector's tax bill can be attributed to taxing districts which extend beyond the boundaries of Main Township. In other words, their neighbors are throughout the whole county. The objector's argument to use the township level is not supported in their memorandum. They cite no authority for that argument. I think they are requesting the Court to allow the township level, because it would be too burdensome they say for them to show or establish the countywide level. However, other taxpayers have managed to commission studies to show the countywide level.

We don't see why this taxpayer shouldn't be held to the same level of proof. I think our whole point is that the county level is required. The

objector has produced no evidence showing what the countywide level is, and that as a matter of law, they have not met their burden, and that the collector is entitled to summary judgment.

THE COURT: That's it?

MR. BURKE: That's it, your Honor.

MR. LEFKOVITZ: May I have a couple of seconds to get my thoughts together, your Honor?

THE COURT: Sure, you do your thoughts.

(Whereupon a short recess was had.)

THE COURT: Proceed, counsel.

MR. LEFKOVITZ: I believe there is a greater issue involved. Each of the cases have got to be looked on the facts presented in each case, and the issues raised in this case is basically the constitutional issue as to whether our

client has the right to be taxed and to be assessed at the same level as other property owners in the same taxing district.

When we come to burden of proof, the county collector has made mention of the fact there have been certain taxpayers which have, in fact, gone for with sales ratio studies. As far as I know, there are only two different taxpayers that have gone forward. One is US Steel, which is involving the US Steel case. The other is American Can, which I believe is still being heard.

In this case, we are not talking about a large corporation such as American Can. We are neither talking about a large corporation as US Steel. We are talking about 33 homeowners. 33 homeowners who are assessed at 100 percent of the market value, and we are looking at a $412,000 also assessment and

a $68,000 tax. We are not talking about a multimillion dollar assessment, and the issue is if the constitutional requirement of uniformity of assessment, due process, and equal protection applies, what must an objector prove in order to show that he is being assessed at a disproportionate rate than other taxpayers. We do not believe it is county. We believe in order to go forward with our case, the law only requires that we have to show or that we show we are being assessed disproportionately than other taxpayers in the taxing district.

The constitutional considerations which apply to this case are Article 1, Section 2 of the 1970 Illinois constitution, article 9, section 4a and 4b, as well as the fifth and 14th amendment to the United States constitution. There are certain factors which separate county from any other

county in the State of Illinois. Cook County is one of the only two counties which are able to assess a quarter of its county on a quadrant basis. All of the counties are reassessed at the same time. Cook County is the only county which classifies property. Cook County is the largest county. Cook County is the only county with the board of appeals and not a board of review, and I think what the Court should keep sight of is that the central constitutional issue and tax basis is uniformity. It is not per se what level of assessment our properties are being assessed. It is are they all being assessed and are they all being taxed uniformly.

We believe that the information contained in our memorandum in opposition clearly shows that the assessor is assessing properties in Main Township uniformly with the exception of my

clients with the exception of the objector's property. The issue in which to determine what is proper geographic area is the taxing district. And I cite for this the Apex Motor Fuel Company case, the Learner case, and the Cohorse case. The county collector in his memorandum mentions several cases in which sales ratio studies were used. These cases included the People ex rel Hilson which was a case involving Lee County; People ex rel Cohorse which is a 1961 case in Sangamon County; People ex rel Callahan which is a 1956 case in Madison County; People ex rel Wenzel which is a 1963 case in Mallicon County. In each of these counties, there were certain sales ratio studies which were used in order to show or attempt to show that the railroad properties were being assessed at a disproportionate rate than other properties in the county. In these

cases, though, the approximate size of those counties are the same size as Main Township, so in order for those objectors or plaintiffs to go forth with their case, they would be talking about a county which would be approximately the same size or a little bit larger than Main Township.

I have attached a copy of a 1981 sales ratio in the sales ratio study did break it down study, which by county. It shows us the number of transfers the reason it was included was so you can relate what had gone on previously with what is going on in Main Township. And you would see according to 1987 ratio studies, the State of Illinois used 415 sales in Lee County. That's People ex rel Hilson case, there were 1,326 sales in the entirety of Sangamon County.

In People v. Callahan, the Madison County case, 1,969 sales. In

People ex rel Wenzel, there were 358 sales. The objector has basically provided the court with three different groups of sales. The first group of sales were sales which occurred in 1981 in Main Township. There were approximately 459 sales included in that group. The second group of sales were properties which sold in Morton Grove, which is different than Main Township, part of Morton Grove is the Main Township and part of Morton Grove is Niles Township. In that study, I believe, there were a little bit less than 200 sales so in order to relate and what an objector must show, you can see in terms of Cook County and in terms of Main Township to put us on an equal footing with those people downstate that were basically on equal footing in terms of burden, what we would have to prove to show we are being assessed disproportionately.

Now, there are several cases which have allowed relief based on disproportionate assessment and they are cited in the objector's memorandum. The first case is Stevens v. Property Tax of Hilverd, the cite is 42 Il. App. 3rd. 550. It is a 1976 case. That's a case involving Adams County. In this case, the court found that the taxpayer succeeded in proving his assessment or property was being assessed disproportionately from other properties. The methodology used in this case was that the taxpayer hired an appraiser to go out and appraise six parcels in the county. The method to be used was not to go into the property, but to drive by the property and to appraise the property and determine their market value.

Based on those six appraisals, the court found that that was a

sufficient method in which to prove that the taxpayer's property was assessed disproportionately than other property. The other case is Givens v. Property Tax Appeal Board which is cited at 84 Il. App. 3rd. 218, which is a 1980 case. In this case the appellate court held there was insufficient proof and in this case there were basically two different lists given. The first list contained approximately 19 properties. It did not contain any information as to sale, dates, location, any such information such as this. The second list, the second exhibit was also held insufficient. In our case, we provided the court with approximately 450 sales occurring in Main Township in 1981, and we believe that the proof that we offer is different than the proof offered in the Givens case and is sufficient.

Furthermore, we cite People ex rel Cohorse. People v. Cohorse is a very important case. It is a 1961 Illinois supreme court case. The basic issue or one of the basic issues was that it attacked the breaking down of counties into four separate districts, four separate assessment districts. One of the issues in that case which is on page 113 is whether discrimination should be ascertained in the township or county level. In this case, the court found that it should be at the county level. On page 114 it should be noted in this case both of the objectors urged that the county level be used and substantial justice will not be denied by its use. In this case if this court is told that these objectors must prove that they are being assessed disproportionately, all other class two property in the county then, there will be no substantial justice.

These taxpayers cannot provide such a study, nor do we believe that type of study is required.

And in addition to that, this court also found as part of the facts, that therefore we believe that there are differences between the Cohorse case and the case at bar, and we believe under these facts, situations that if there was a choice and the court was to look at substantial justice between using the township level and using the county level, that they would in this case choose a geographical area, something different than the county level of assessment.

The other case as we cited as authority using a geographical area, something different than the county level of assessment is the Apex Motor Fuel Company v. Edward Barrett, which is 20 Il. 2d. 395, 1980 Illinois Supreme Court case. In this case at page 773 when the

court was talking about uniformity, the court stated --

THE COURT: You say 773?

MR. LEFKOVITZ: 179 N.E. 2d. 769, the court said it prohibits which is uniformity of taxation of one type of property within the taxing district at one value or the same kind of property in the same district is valued at either a grossly less value or a grossly higher value.

In this case the court found by breaking the county down into four districts, it's basically not enough differences in market value, so there would be nonuniform assessment between the first, second, third, and fourth district. There has been changes between the date that the court entered this decision and today s date in terms of increases in value to property, the fact the assessment reassesses the property in

one district. One year assesses property in a different quadrant. Over a four year period, there are, in fact, differences in market value and those facts were not evidenced when the court entered its decision in Apex Motor Fuel Company. The other evidence which we believe support the use of a geographical area separate and apart from the county is the actual assessment practices in Cook County.

First of all, as it is already stated, the county is broken down into four separate quadrants and each quadrant contains four various townships. The assessment -- when revising assessments and sending out notices and publishing does such on a township by township basis. The Board of Appeals in opening and closing townships for the filing of the case and hearing also does that on a township by township basis. What's most

important is under section 585 of chapter 120, changes to do with the publication, whether the assessor completes the assessment in a quadrantal year or whether the assessor makes changes to properties that are nonquadrantal year, the assessor must publish. Not only must the assessor publish, but the assessor must publish in the township in which the property is located.

The reason why and the purpose why the assessor must publish in a township in which the property is located is to give taxpayers in that township the opportunity to see whether their property is assessed disproportionately than other property. I cite as authority for that the Jennings case as well as Drews v. Foxworthy. People v. Jennings is cited at 23 Il. 2d. 125, it is a 1954 Illinois Supreme Court case. It is also cited at 119 N.E. 2d. 781. A copy of the decision

for the court. The other case is Drews v. Foxworthy, that is cited in our brief, and I don't have the citation or know it right off, so in terms of publication and the purposes of publication as the county maintained, we are talking about a countywide level, then it would make sense in order for a client to say in Main Township or Niles Township to determine whether his assessment was assessed disproportionately, then the assessor would have to assess the entire county at the same time. And that isn't down, that's why it is down in a township basis, so a neighbor can check his neighbor's file, his neighbor's property, and people down the street in order to determine whether he is being assessed to disproportionately.

The other factor that the Board of Appeals of Cook County themselves have cited standards of how to present a case

based on uniform which I think you have a copy of, so in order to present a case at the Board of Appeals, they don't require a city level assessment. They don't require a township level of assessment. They say go within two or three blocks, find comparable such as yourself, take a picture, and provide us with pictures and other evidence.

Lastly, we come to the issue of exactly how much of each tax bill is based on the taxing district or what taxing districts are applied. It should be noted in the affidavit by Barbara Corral that there is a -- in terms of taxing districts is community college 535 which is contained both in Leighton Township, Main Township, various other townships as well as Main Township. In the collector's first memorandum, it should be noted that in terms of that affidavit, something seems to be missing. We don't

believe it is correct. Here is a tax bill for a property in Jefferson Township and as you can see, community college number 535 does not appear on there. The community college in this case is community college district 508.

Furthermore, for Main Township High School District 207 and the collector's first brief, they acknowledged the fact this was only Main Township and apparently Barbara Corral's affidavit includes Main Township, Leighton Township, Norwood Park and Wheeling. I have lived up there, and I believe it may include other areas other than Main Township. I also believe that most of the students going there probably live in Main Township, and there may be some type of overlap. What we are talking about is an imperfect system. If we are talking about a community, if we are talking about a township, if we are

talking about a city, if we are talking about a village, it is impossible to be perfect, because there are going to be overlaps and one person may be treated a little differently than others. But what we feel this court -- we feel the issue for this court to decide is in order to do justice, in order to see that my client's rights are protected, what is the proper geographical area in this case as the court noted at the onset, the objector's property is assessed at approximately 100 percent of market value.

In this case, we believe that other similar class two properties is assessed or are assessed completely lower than that and assessed at approximately 68 percent of market value. Our clients have a constitutional right to be assessed uniformly, and that their taxes be the same as their neighbors' taxes, and they not be assessed disproportionately.

We believe the evidence we show that we presented shows that the assessor is assessing uniformly in Main Township. That if you look at the sales involved, they are relatively narrow, that there are very few properties assessed away from the 10.88 percent level of assessment, so what we are saying here is the assessor is assessing uniformly in Main Township now that our client in the objector's property is being assessed disproportionate from the way other properties are being assessed, and that we ask that the collector's motion for summary judgment be denied.

THE COURT: Okay. Let me ask some general questions.

THE COURT: At the end, I want to ask a lot of more questions.

Basically when you are saying in your argument, I am focusing on you are saying the American Can, US Steel, the

other larger corporations could afford these studies. What you are trying to do is open the door to the homeowners, taxpayers, the smaller taxpayers, whether it be a small company in your case condominium association, what would be the cost if you are going to do it? What's the difference in the cost to your claim to do a countywide study as opposed to doing a township study?

MR. LEFKOVITZ: I don't know how much it cost American Can. I think the first study that was done was $17,000.

THE COURT: What would it cost your client? Do you have any idea?

MR. LEFKOVITZ: I would assume the cost would be higher than that, $17,000 or higher.

THE COURT: As opposed to a township in general range?

MR. LEFKOVITZ: So far our cost excluding my time which is substantial in

this is approximately $1,000 to date.

THE COURT: $1,000?

MR. LEFKOVITZ: To date.

THE COURT: One of the arguments they could use, the Department of Revenue studies for countywide with the assessor's office, are they available?

MR. LEFKOVITZ: We don't believe it is available due to the decision of US Steel. I think it is a problem with the state of Illinois studies. I would like to use it if the court would find that it is a valid study. We would be more than happy to use it, but I think with the problems of the US Steel case, it wasn't until 1983 or 1984 that the real estate transfer decoration in terms of financing and other things that we were able to use the State of Illinois study. We may be able to use it, but I am not certain whether we can.

The other issue, the other question is I don't believe this issue was ever raised in US Steel. I don't think this issue was raised in American Can as to what the proper geographic area is. The only case I am aware of is the Cohorse case. In the Cohorse case the court put a lot of weight on the fact that the objectors ask that the countywide level be used.

THE COURT: Okay. I understand that. How many townships are there in Cook County?

MR. LEFKOVITZ: I believe there are 38.

MR. BURKE: 30 something.

MR. DAVIS: There are 38.

THE COURT: The argument should be township today.

MR. LEFKOVITZ: My argument could be you can use neighborhoods, you can use townhip, you can use city in terms of

proportionate taxation. I believe that the closer you are to the property then that's when the constitution applies. I think it is sufficient to show the township.

THE COURT: My point is that you are arguing township. What would be the difference of arguing township or quadrant or neighborhood or subneighborhood or combined neighborhood, like the Hyde Park-Kenwood neighborhood as opposed to the Hyde Park neighborhood in the Uptown-Lakeview neighborhood? You say that's what should be done.

MR. LEFKOVITZ: I am saying there are no hard and fast rulings. The county is saying county and in a case such as this, there is -- in a case such as this, there is no constitutional protection for my clients. I am saying that the court should determine what evidence the court feels sufficient in

order to show that the objector's property is being assessed disproportionately from other properties in the taxing district.

THE COURT: What if Hynes'office or the assessor's office said gee, we made a mistake with yours, it should be higher. Your assessment is really -- you basically agree with whatever his assessment was?

MR. LEFKOVITZ: We believe as long as our property is assessed uniformly, whether it is assessed at 16 percent level or 10 percent level doesn't make a difference. Our tax boards would be the same as our neighbors, the people in the neighborhood, people in the village, people in the township.

THE COURT: It s really not at issue in this motion. It is an unfair question.

MR. LEFKOVITZ: It is a fair question if I can answer any of the court's questions.

THE COURT: Let's proceed with the state and then I have some general questions. The state's attorney's office for the county.

MR. DAVIS: Your Honor, if I may, there is a great deal of looseness in the objector s case. The way it is being presented on this issue, and I think that points up to the problem which is -- with which the court is confronted when it analyzes the issue which is the only issue here. What is the appropriate jurisdiction for purposes of comparing purported level of assessment. It s a threshold issue we have raised, and the court has to get by that before it gets into the probably more difficult questions. If this taxpayer's contentions were to be sustained in that he could

offer up evidence which relates to the level of assessment of only a single township, only then would we get into the problem and we would submit there would be many regarding the validity of the purported studies being submitted whether they, in fact, suffer from some of the same defects that the Supreme Court found in the state studies in the US Steel case. But the issue can be refined and simplified hypothetically going back to your Honor's question at the beginning. Your Honor is correct in that their contention is effectively the other properties then they are being debased to sublevel below full market value before the ordinance level of assessment is applied. It is the same method of analyzing, you can reach the same conclusion by two different methods. They could be effectively said to be contending that all property other than

theirs is estimated to be at 80 percent of full market value, and then the 16 percent ordinance level is applied, that would be the same mathematically as saying that other people are assessed at about 13 percent in full. In other words, 16 percent of 80 instead of 16 percent of 100. The question here really goes beyond that or it is more fundamental than that. It is before you attempt to make those precise measurements of what the level of assessment really is, whose property are you going to measure.

And it is our contention under the legal and assessment structure in Cook County and under the authority which Mr. Burke referred to going in, the court is compelled to require that the measurement be made on a countywide basis. And since counsel here has stipulated that he proposes evidence only of a single township, then necessarily

the communication follows that no constructive fraud will ever be able to be shown, and this case is appropriate for summary judgment right now. What that issue is picked apart in a little bit more detail as we have picked it apart, I think it can be seen that the law is extremely wise and rational foundation in as we believe requiring that the countywide level to be used under the circumstances that are attended in Cook County. The objector has really not provided any authority whatever for the opposing proposition.

He has also cited several cases where generally uniformity issues are discussed, but counsel, I would invite him when I am finished speaking to point to a single line in any one of the cases where the court is directly confronted with the issue.

THE COURT: Can you? Neither side can.

MR. DAVIS: We can and we pointed to the Cohorse case.

THE COURT: Counsel cited the page. I read it. I don't think the court has decided this issue, especially in Cook County. The analysis -- the fact was really on point.

MR. DAVIS: I will concede that the question hasn't been decided recently in Cook County under the circumstances that confront the court in this case. That doesn't mean the Cohorse case is distinguishable. It pointed out between that case and this, it distinguishes differences we will submit as the situation. In Cohorse if anything the argument was stronger to use the township level of assessment, because -- and there it was the collector who was contending the township level of assessment was the

appropriate level to be used, and he argued for that on the basis that assessments in that county were established originally township by township. In Cook County, that's not the case. There is an elected assessor of Cook County who is required to assess on a countywide basis quadrant by quadrant under the statutory system that has been set up. The other statutory point that's relevant to levels of assessment and what is the appropriate level of comparison arises out of the state constitution and the authorization for Cook County to classify. As counsel point out, it is the only county in the state that classified.

When the 1970 constitution was enacted, it permitted counties over a certain level of population to classify property for purposes of taxation. And if you read the constitutional debates, it is quite clear that what the convention

delegates were concerned with was the situation specifically in Cook County. It was widely known there was a de fact system of classification that was maintained by the assessor prior to 1970 in apparent contravention to the 1970 constitution provisions. And a compromise was hammered out which allowed the county to continue to classify subject to limitations as the general assembly may enact.

In 1974, the general assembly enacted a limitation, and they said Cook County could continue to classify after that, but the county board had to establish the classifications. A legislature has directly declared it's the county governing body that sets levels of assessment in Cook County. The county governing body has done that in the classification ordinance. It has set levels for residential property now at 16

percent which extends countywide, and that is the legal mandate which the assessor is obligated to follow whether he assesses property.

Conversely, we would think it follows that that is the appropriate jurisdiction of comparison when a taxpayer comes in and contends that the assessor has defrauded him in his assessment of properties other than that particular taxpayer which is in essence what a uniformity claim is. Now, counsel has spent probably a great deal of his argument arguing that homeowners should not be held to the same standard as the large corporation in constructing the sales ratios study but not whit a of authority has been cited for their proposition to the court. And we would respectfully suggest it's a rather surprising proposition and somewhat ironic when it isoffered in a case where the

issue is uniformity and equal protection for one taxpayer coming in and essentially arguing that the rules should be different for him than they are for everybody else to make out the same kind of a case. I don't think the court is considering it is evidence either insofar as the offhand comments of counsel as to how much the American Can taxpayers have spent on their sales ratio studies. As long as it is being talked about, I wouldn't want a misimpression to arise.

There are a number of sales ratio studies at issue in the American Can case. It is not the only sales ratio case that is active. It is one extremely active involving office case. The American Plaza case, thereare other -- many other objections. Probably every objection on file in the court that contains at least boilerplate allegations regarding the assessment levels, and I would suspect an

examination of them would confirm that virtually all of them where they specify the assessment level that they are complaining about, they talk about the county level of assessment.

In the American Can case, the taxpayer has four sales ratio studies and it is a commercial taxpayer. The two initial sales ratio studies which were done by their outside expert which were presented to the court in 1983 were compiled for classified property, not class two property. That's commercial property, and the discovery process in that case has revealed that the outside expert did a lot more independent work in compiling the sample on those classified studies than he later did in the class two studies which he did in 1986. In the class two studies he simply used a canned sample which he got from the department of revenue, rather than compiling it himself.

Now, I have pointed out earlier the issues of whether the studies are meritorious or not are before the court this morning on those motions. Only the singleissue of appropriate jurisdiction of comparison as long as we are talking about how much the studies cost, the $17,000 figure that counsel tosses out undoubtedly refers to the classified study and not the class two study, and it almost undoubtedly refers to a study where a large amount of work has gone into it independently in compiling the sample.

I think all of that really is beside the point, because I don t think the proposition is sustainable that just because a taxpayer comes in and says that we are homeowners, the rules of proof and the substantive law of what constitutes constructive fraud. What constitutes a constitutional violation should be changed for these people simply because it

is their contention they shouldn't have to pay as much as somebody else might have to pay to produce the proper evidence to make a proper case to the court. I don t think that proposition could be established in any judicial field in any type of case and those are the same sorts of inequities that exist everywhere whether it is the cost of lawyers to come into court, pro se litigants are held to the same standard of proof as lawyers, and they are not denied to argue because they can't hire a lawyer, the law should be changed for them, and the issues should be decided differently by the court.

So we would respectfully suggest to the court that that contention which is really the objector's fundamental contention should just be rejected out of hand as far as the county cost quadrantal system and classification system, I commented on that. I think it supports the

collector's contention that the countywide level or the countywide analysis is the only appropriate analysis for uniformity purposes. Counsel concedes that the Cohorse case is at least extremely important and notes that it and the Apex Oil case refers to the taxing district. There is an example of the looseness in the representation if you read the Apex Oil case carefully. It is crystal clear the taxing district quote unquote they are talking about is Cook County. The contentions that were being advanced in that case in taxing district is a word that could be used equally. We would respectfully suggest the court should not decide the case based on an equivocation in an earlier decision.

In Apex, there were taxpayers who were contending precisely that they were being discriminated against relative to the countywide level of assessment,

because of the then new statute which split the county in two for assessment districts, and they were saying that in inflationary times, one district is naturally going to lag behind the other. When one district gets reassessed each year, and therefore people in the district which had just been reassessed would be discriminated against relative to others in the county, so once again the Apex decision supports the proposition it is the countywide level of assessment that's appropriate.

Counsel has raised the fact that the assessor can publish revisions of assessment in nonquadrantal towns, and nontownships and one of things attached to his response is a board of appeals paper talking about making uniformity claims. Both of those contentions are once again beside the point. Uniformity claims in that sense relate to the market value of

the properties, and it's obvious that properties in an individual neighborhood are relevant in determining the market value of another property in the neighborhood just as everyone knows that location is one of the most important factors in determining the value of a property at all. That does not and that may well be proper for an assessment agency to take into account what other properties in the immediate neighborhood are valued at, because in looking to see what other properties in the immediate neighborhood are assessed at, it gives some kind of an objective indication of what the market value of similar properties are, but that doesn't even raise or let alone meet the issue of what is the general level of assessment that's appropriate for purposes of comparison in a constructive fraud case before this court. And if you must look at the Board

of Appeals Exhibit No. 13 the objector has proffered the second to last paragraph of it which advises the taxpayer, remember however that the board is required by law to take into account what properties in your neighborhood have been selling for and making a final decision of what your assessment should be. They are advising them you can't walk in here and say the guy down the street is assessed lower than me, therefore uniformity is violated. They will look at it, they will look at it for what it is worth, but I don't think that counsel has presented one whit of evidence to the court that the board does anything else. I don't think it would be that relevant if he has, since the board is an assessment agency. The assessor is an assessment agency. This court is not an assessment agency. This is a constructive fraud case where fraud is not found. The court lacks constitutional power to act on

this assessment, and it is not the issue before the court to redetermine what the assessment of any given property, including the objector's should have been The only issue before the court is to determine whether other property in the appropriate jurisdiction is so far under valued that the instant taxpayers have been defrauded and preliminarily on the threshold issue we have rated to determine what the appropriate jurisdiction is that the taxpayer has to show.

Now, as far as the Jefferson Township tax deal is concerned, first of all the court shouldn't consider it at all. They are Supreme Court rules which govern the form of affidavits and summary judgment, and I don't think they contemplate bringing in another piece of evidence at the hearing in offering it up to the parties and to the court. But it also suggests that counsel hasn't

carefully enough read Ms. Carroll's affidavit. That doesn't state the taxing district doesn't relate within the entirety of the taxing district but all or portions of the township. There are entirely many properties in Jefferson Township that are not located within that taxing district. Once again it points out how equivocal the term is, the term taxing district can be. Our point which we have made in Ms. Carroll's affidavit is that 69 percent of the tax burden on this objector's property is derived from taxing district whose borders extend beyond Main Township 69 percent of the burden which they claim is discriminatorily imposed upon these objectors goes well beyond the scope of the evidence which they propose to offer to this court to prove the discrimination. That is a nonsequitur and simply cannot be contended that constructive fraud can be inferred from

proof of the assessment level or the purported assessment level in Main Township which is a political subdivision of convenience insofar as the assessment system in Cook County is concerned. It has nothing to do with how levels of assessment are set by statutes, by ordinances, or by the assessor who is obligated to assess according to that statute and according to that ordinance through the county as a whole. If the court doesn't have anymore questions --

THE COURT: First, I want to make sure you want this back over the objection of the county. I am going to make it part of the record. I will make it a part of the record for whatever it is worth. I would like to ask a few questions.

It is true that I take it as hard as it is to admit the assessor's office does encourage people to look into local properties as the county does

encourage? You have to speak for the court reporter.

MR. DAVIS: I am sure that the assessor is willing to consider whether people come in and have assessor's complaints, and they say hey, my house is assessed and x's house is assessed as y. And we have the same number of bedrooms, I am sure the assessor is willing to consider that that relates to the assessor of market value not the level of assessment.

THE COURT: There is -- where I am confused, isn't it true that's one step removed from the sales ratio study? Is it true we can look at the property and say Hynes -- Mr. Hynes, say market value of house a is listed at $80,000 on the -- that's market value. I have to stick to my terms, and I know it is worth a hundred and Mr. property b is listed at $80,000, and I know it is worth a hundred and

property c is worth $80,000 and I know it is worth a hundred, and I am assessed -- my own property is worth a hundred and I am assessed at a hundred. Shouldn't he be allowed to make that argument and isn't that allowed to be made before argument?

MR. DAVIS: Not before a court.

THE COURT: I know but isn't --

MR. DAVIS: Not in kind on the level of assessment, not by the assessor or board of appeals. You can make that argument that the two issues were identical if there were only four properties in the whole -- if there were only one taxing jurisdiction, one assessment jurisdiction and four properties in it, then your Honor would be absolutely correct, because the uniformity analysis would be confined to those properties. The problem is that you can't reduce Cook County to a hypothetical. That is as simple as

that, because there are 1.3 million parcels in Cook County.

THE COURT: Remember your argument. I want to make sure the record is clear I take it some court some day should decide these. I want to make sure you have issues that other courts should consider, cost to the county the hardship on the county.

MR. DAVIS: That was raised in the memorandum, and the point was raised in that the assessor is obligated by law to assess every one of those 13 million parcels each year, generally assesses one quadrant each year, the quadrantal system one fourth of the three million parcels. The Apex Oil decision recognized that a reasonable attempt to assess uniformly was all that the constitution and law requires.

I believe the phrase in the decision, if the attempt is evident to

adjust the assessment with a reasonable degree of uniformity, and what we are suggesting is that when an assessor is confronted with a monumental test as the assessor in Cook County, it is simply inequitable and impossible in terms of the administration of the tax system to allow people to come in and focus in a micro optic fashion on a few properties nearby to theirs in location. In other words, the constitution tolerates a certain amount of give in the assessment system, and when courts are given the tax of evaluating whether the assessor has committed a fraud against the taxpayer, the issue has to be defined in terms of that practical amount of give in the system that is required or it won't function. There is no system of assessment in a county of this size.

THE COURT: This size?

MR. DAVIS: This size. It is the second largest assessment jurisdiction in the world and I don't think that any system of that size would survive the kind of close analysis which counsel proposes to subject it to in a court where the burden is showing fraud and we don't think that's logical or required by the law.

THE COURT: Do we have township assessors? Somehow there are township assessors?

MR. DAVIS: There is a sort of thing as township assessors in Cook County, your Honor, and it is a -- I could most clarify calling it a political acronym. They are subject to the Cook County assessor.

THE COURT: They do exist?

MR. DAVIS: They don't assess.

THE COURT: They exist?

MR. DAVIS: They do not assess in any practical sense of the word.

MR. LEFKOVITZ: The assessors act in the same position as a township assessor. They apply certain rules to certain townships at certain times.

THE COURT: Let me continue on with the questions.

MR. LEFKOVITZ: I have a question. If you have a question and I would like to respond.

THE COURT: You want to respond to that also, that last question? And I encourage questions from both sides. I do believe this is an issue the court should decide other than the circuit court of Cook County. I would like to make the record clear if you ask questions, think something is not clear, we will try to make it easier forthe higher courts.

MR. LEFKOVITZ: In terms of Apex Motor Fuel Company case, that case was in 1960. It was an earlier case, the court found as part of the facts which

underlined its decision that there were no great differences, discrepancies in market value from year to year, and therefore if you were to assess one property one year and the same property four years from now, you would not find any increases in market value over that four-year period. I think the facts in this case and the circumstances in this case have changed in that you do find over a four-year period that there are changes in market value which typically causes assessments to go up every four years.

Furthermore, the assessor does assess quadrant by quadrant. He basically assesses in the same role as a township assesses when he assesses a township. If you are to look at the method the assessor uses one year, he would update the records to sales that occur one year and assess properties in a different district the following year. He would apply different

market values, and apply different rules, so in a community such as Cook County, because of the changes in market value, because of the changes in the assessor's office is that you do find the properties that are assessed in different quadrants are, in fact, assessed differently.

THE COURT: Yes, than is two questions I think there is a strong argument for localized assessment ratio studies. I think there is extremely strong argument you made. The question is today's township, what would prevent it from tomorrow being a neighborhood, Hyde Park-Kenwood, and wouldn't that, in fact, help defeat or defeat the principle of uniformity in that each judge at least until the appellate court told us not to, each judge would say I am taking Hyde Park, another judge just by luck of draw, I am taking Hyde Park-Kenwood, I am taking township only, and still another judge

would say I am taking the quadrant only and still another judge would say I am sorry, I am taking county until the appellate court decides? Would you agree that would not lead to uniformity?

MR. LEFKOVITZ: I think if you applied neighborhood value, if you apply a township value, that at least interms of property within the township, in terms of that one property that would be assessed uniformly.

THE COURT: In all of us from your standards today, what would prevent Judge Yates from accepting the county position tomorrow and Judge Wachowski from saying townships are too large, I will go down to neighborhoods?

MR. LEFKOVITZ: I think what happens if you look to see in terms of publication that the legislature in terms of publication found that the township is one of the bases because that's where the

assessor must publish. It is true we basically have choices here, and you can choose municipalities which are part of the reason I looked in Morton Grove. You can use a township, you can use a quadrant. I think you have to use something realistic that would still allow these taxpayers to be able to have the constitutional rights, and if you apply the county level, then you are basically saying we understand you may be assessed more than your people in townships. It makes no difference to people in the south suburbs or in the west suburbs.

THE COURT: One of the flaws I see in the argument, I want you to respond to it, and the county can respond also. The county isn't really a county assessor. There is a pocket of bad or poor assessments or appraisals should not extend or perpetuate that mistake by comparing properties in that pocket to

each other whether that pocket is Lincoln Township. Let's look at the extreme of Kenilworth, all of the property of Kenilworth is assessed at 80 percent of their true market value, and the subject property is appraised at 100 percent of its true market value in Kenilworth. I think the first reaction is a very valid argument could be made to reduce that subject property by 20 percent, keeping it uniformed with the rest, however the rest of Cook County is assessed at 100 percent, so what the assessor is doing if it accepts your argument, helping one taxpayer in Kenilworth to perpetuate an error. If you look at the extreme further, if we compare Kenilworth at 80 percent and go down to Ford Heights which in my understanding is the poorest neighborhood in the nation, compare Washington Park in the City of Chicago, they are assessed at 100 percent. They

say well, everyone else in the Washington Park area in the City of Chicago is assessed and this is the one property, let's increase it so everyone in Washington Park is at 100 percent, people in Kenilworth is at 80 percent, shouldn't the assessor do it countywide so the mistakes are not allowed to continue? Your suggestion -- I don't understand your argument. It seems what you are assessing, we defeat that purpose almost an obligation that the county assessor has.

MR. LEFKOVITZ: First of all in terms of the people of Kenilworth, the taxing district and the taxing bodies in Kenilworth are the same. Most of the taxing districts are from local districts. They are not county districts. If you look at the tax bill, only 17 percent of the taxbill applies to countywide taxing bodies. If you look, most of them are

Main Township, Niles Township, they are all taxing bodies, and taxing district in the same location. If you are talking about uniformity and constitutional protection, then as long as the people in Kenilworth are assessed uniformly, that's what the issue is and in Chicago,
there is other problems because you are talking basically about one city which up until recently was assessed at four different times. But I think in terms of the constitutional protections of due process and equal protection, that it is a very valid argument to apply the township level if the assessor finds that he is assessing a pocket of properties at let's say 80 percent and he is assessing other properties at 100 percent, the assessor has the right to increase those assessments providing he gives notice and opportunity to be heard. And the procedure that the assessor would use is

he would send out notice when he sends out notice for the rest of the township. When he publishes, he would have to publish those increased assessments in the paper in the township so that persons can see if he is being assessed uniformly and whether he is being assessed disproportionately from other people, so I think it is clear for the purpose of the publication statute that a logical geographic area is the township.

It is applied uniformly throughout the assessment procedure in Cook County, so if the court was trying to determine a logical geographic area which still protects the right of the public as well as the right of the taxpayer, then I think the township level assessment falls within those perimeters.

THE COURT: You want to respond to that last thought I made?

MR. BURKE: Yes, your Honor. I can't disagree more with counsel that that constitutes a logical method of measuring whether uniformity is achieved. I think your Honor s original thought is really the heart, the criticism of this objector's case. If no assessment system is going to assess imperfect values each time, that's why the law permits a certain amount of reasonable give in the system. And if it is discovered that the assessor is assessing a pocket as counsel apparently contends that it is, we are here because he doesn't have any contention other than regarding a pocket. In this case the pocket formed by Main Township.

If the assessor is assessing that pocket disproportionately against this taxpayer, you may well be making up for that disproportionate assessment as regards to this taxpayer in

other areas of the county which also has an effect on this taxpayer's bill so not only as a matter of general policy which I think is what you were getting at, your Honor. It would perpetuate an error if the assessors were to be -- if his performance were to be measured on a pocket by pocket basis, all around the county until we have reduced the county to a patchwork of pockets that have been reassessed pursuant to the decisions of various trial courts instead of a single countywide assessment jurisdiction. Even in the individual case that sort of analysis could reduce gross inequities. And that arises from the way taxes are assessed, levied, and extended. In a complicated county like this where you have over 10 or 12 taxing districts on an individual bill, 17 percent of the district of which counsel concedes covered

the whole county. You can't ignore the other ones either, though.

If you look at Ms. Carroll's affidavit consolidated elections in the Metropolitan Sanitary District, both significant portions of this tax bill, they may not do the whole county, but they cover all of the suburban counties of single township outside of Chicago. The other districts which are in here, community college district 535 covers nine townships or portions of nine townships. The TB sanitarium is a small portion of bills. It covers all of the suburban counties. The mosquito abatement covers nine townships. The high school district which is another significant part of the bill covers five townships.

THE COURT: I see your point, counsel. If you want to use the objector's exhibits, you can do that.

MR. DAVIS: No, your Honor, that exhibit which I objected to was the new bill which he tossed up from Jefferson Township. I am talking about the bill thatwas already in the record.

THE COURT: Some people have no sense of humor. I will tell you my general feelings are -- first, do you have questions? No questions. My feeling always that counsels are always entitled to a decision. If you want a decision now, that's your right. I have no right to take it back. That's my own personal feelings. If you want a decision, otherwise I will read over -- especially the one case which reads well enough and come out with the decision whenever you want. I can do it real quick right after lunch. I can do it in a few days. You are the one trying to make a living. You are entitled to a decision today I do believe the case has been well read and

well briefed and gave an excellent record for appeal. You are entitled to a decision today. I would like toread it, but it is up to you.

MR. LEFKOVITZ: The objector has no objection to give your Honor a sufficient opportunity to both reread whatever cases the court feels applicable as well as whatever arguments were made at the hearing today.

THE COURT: You don't object since you are here all of the time?

MR. DAVIS: We have no objection. We would be happy to have the court take as much time as it wants.

THE COURT: I want to be fair to the state, but you are the ones that have to keep coming back.

MR. LEFKOVITZ: I am in the loop all the time. If the court feels there are other questions that have to be

answered and set another hearing, I have no objectionto that.

THE COURT: I appreciate that offer. Why don't we, if you don't mind, I will take a whole week. Is that a problem with you, coming back next week, the 28th or 29th of May? How about May 28th or 29th, Thursday or Friday?

MR. LEFKOVITZ: I prefer Thursday.

THE COURT: Let s do it Thursday morning at ten o'clock.

MR. LEFKOVITZ: Thank you, your Honor.

MR. DAVIS: Thank you a lot for all of your time, Judge.

(Whereupon the above-entitled cause was continued to May 28, 1987 at 10:00 a.m.)

APPENDIX E

Ill. Rev. Stat. ch. 120, Para. 675 (1981)

675. Payment of taxes-Payments under protest-Illegal taxes-Bonds-Payments

§ 194. (a) Except as otherwise provided in Section 224.1 of this Act, current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land remains unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

If any person desires to object pursuant to Section 235 of this Act to all or any part of a real property tax for any year, for any reason other than the real estate is not subject to taxation, he shall pay the tax installments as they become due, and each installment payment, shall be accompanied by a writing, substantially in the following form:

Payment under protest.

Vol. No. ..... Item No. .... (as the same appear on the General Tax Bill). Original amount of tax $.....

Amount of payment $..... This payment shall be applied to the taxes of all taxing bodies ratably, subject to refund of ....% of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.

Name of taxpayer.....
Address.....

The person protesting shall present to the collector 2 copies of the written protest signed by himself. The collector shall write or stamp the date of receiving the same upon the copies, and sign the same, one of which copies he shall retain and the other he shall deliver to the person making the payment under protest.

In counties having 1,000,000 or more inhabitants, and in other counties which have adopted the method provided for in Section 224.1, any such written protest, whether of all or any part of a real property tax, shall be presented to the Collector at the time of payment of the second installment of said tax and at no other time.

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes.

When any such objection is filed in a county of fewer than 1,000,000 inhabitants, there shall also be filed a

duplicate copy for the use of the State's attorney and a triplicate copy for the use of the county clerk of such county. Any such objection or amendment thereto filed in a county of fewer than 1,000,000 inhabitants shall contain on the first page thereof a listing of the tax levying units against which the objection is directed. Within 10 days thereafter the clerk of the circuit court shall deliver one copy to the State's attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each tax levying unit, whose tax monies may be affected by such objection, that such objection has been filed. Any amendment filed to such objection, except any amendment permitted to be made in open court during the course of a hearing on such objection, shall likewise be filed in triplicate, with the duplicate copy delivered to the State's attorney and the triplicate copy delivered to the county clerk by the clerk of the circuit court as herein above provided in the case of original objections, and the State's attorney shall within 10 days of receiving his copy of such amendment notify the duly elected or appointed custodian of funds for each tax levying unit whose tax monies may be affected by such amendment that such amendment has been filed. The State's Attorney shall also notify such custodian and the county clerk in writing of the date, time and place of any hearing before the court to be held upon such objection or amended objection not later than 4 days prior to the hearing thereon. The notices provided herein shall be by letter addressed to such custodian or the county clerk and may be mailed by regular

mail, postage prepaid, postmarked within the 30 day period or the 10 day period, as the case may be, but not less than 4 days before a hearing.

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same of subsequent year. Proceedings upon objections filed under this Section are subject to Section 194a.

Where any tax is paid in full and protested as herein provided before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book knowing the tax, and such transcript shall be an amendment to the tax judgment, sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.

In the payment of real or personal property taxes or any installment of real property taxes, the collector

shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which were not paid under protest. The collector shall withhold from distribution the lesser of: (a) the total amount of taxes paid under protest; or (b) an amount equal to the average annual tax objections sustained over the preceding 5 year period; or (c) 1/2% of the total taxes collected. Such amounts paid under protest or withheld from distribution shall be deposited by the collector in interest bearing accounts. If the final order of a court on the protest results in a payment to the taxpayer of all or a part of the taxes paid under protest and withheld, all or a proportional share of such interest earned during the pendency of the protest by the amount repaid to the taxpayer shall also be paid to the taxpayer. If the final order of a court on the protest results in a payment to the taxing districts of all or a part of the taxes paid under protest and withheld, the interest earned during the pendency of the protest by such taxes paid to the taxing districts shall be paid into the county treasury. The collector shall deduct from the taxes of any taxing body for any year the amount of any tax for any year held illegal by the final order of a court, and use the amount deducted to equalize the distribution.

Ill. Rev. Stat. ch. 120 para. 716 (1981).

716. Proceeding by court-Form of order-Cure of error or informality

§ 235. The court shall examine the list, and if defense (specifying, in writing, the particular cause of objection) is offered by any person interested in any of the lands or lots, to the entry of judgment against them, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of Section 194 of this Act; and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment

is given in substantially the following form:

Whereas, due notice has been given of the intended application for a judgment against such lands and lots, and no suffcient defense having been made or cause shown why judgment should not be entered against such lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

The order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law,

or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levying of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default it was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all cities, villages and incorporated towns in counties containing a population exceeding 1,000,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in Section 209, may be made, the procedure shall be in all respects be the same as in this section prescribed, except that there shall be 2 separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes.

Supreme Court, U.S.
FILED
JUN 12 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1786

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

TWIN MANORS WEST OF MORTON GROVE CONDOMINIUM ASSOCIATION,

Petitioner,

v.

EDWARD J. ROSEWELL, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether certiorari should be granted to review Petitioner's constitutional arguments based on the supposed cost of a statistical study, where Petitioner failed to present any evidence of the study's cost to the Illinois courts, and where those courts made no specific findings concerning such a cost.

2. Whether a taxpayer claiming that its property is assessed at a discriminatory level may be required to compare its assessment to the average assessment level of other property in its class throughout the taxing jurisdiction consistently with the doctrines of equal protection and due process.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW ..	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	6
I.	
CERTIORARI SHOULD NOT BE GRANTED TO REVIEW PETITIONER'S CONSTITUTIONAL ARGUMENTS BASED ON THE SUPPOSED COST OF A STATISTICAL STUDY, WHERE PETITIONER FAILED TO PRESENT ANY EVIDENCE OF THE STUDY'S COST TO THE ILLINOIS COURTS, AND WHERE THOSE COURTS MADE NO SPECIFIC FINDINGS CONCERNING SUCH A COST	6
II.	
THE REQUIREMENT THAT PETITIONER SHOW THE COUNTY-WIDE AVERAGE ASSESSMENT LEVEL TO SUPPORT ITS CLAIM OF DISCRIMINATION IS CONSISTENT WITH THE DOCTRINES OF DUE PROCESS AND EQUAL PROTECTION	9
CONCLUSION	16

TABLE OF AUTHORITIES

Cases:	PAGE
Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Co., West Virginia, ____ U.S. ____, 109 S.Ct. 633 (1989)	10, 11, 12, 14
Boddie v. State of Connecticut, 401 U.S. 371 (1971)	14
City of Springfield, Massachusetts v. Kibbe, 480 U.S. 257 (1987)	8
Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966)	14
Hillsborough v. Cromwell, 326 U.S. 620 (1946)	12
Kadrmas v. Dickinson Public Schools, ____ U.S. ____, 108 S. Ct. 2481 (1988)	13, 14
Lehnhausen v. Lake Shore Auto Parts Co., 470 U.S. 356 (1973)	10, 14
Little v. Streater, 452 U.S. 1 (1981)	14, 15
Mishkin v. State of New York, 383 U.S. 501 (1966)	8
Ortwein v. Schwab, 410 U.S. 656 (1973)	15
Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981)	2
Rosewell v. Twin Manors West of Morton Grove Condominium Assoc., 175 Ill.App.3d 564, 529 N.E.2d 1104 (1st Dist. 1988)	5, 8, 9
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Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350 (1918)	10, 12
United States v. Kras, 409 U.S. 445 (1973)	15

Constitutional Provisions:

U.S. Const., Amend. XIV, §1 (Due Process and Equal Protection Clauses) ..... *passim*

Ill. Const. 1970, Art. IX, §4(b) 2, 3

Statutes:

Ill. Rev. Stat. 1987, ch. 120, ¶487 .....

Ill. Rev. Stat. 1987, ch. 120, ¶492 3

Ill. Rev. Stat. 1987, ch. 120, ¶501a 3

Ill. Rev. Stat. 1987, ch. 120, ¶501e-1 3

Ill. Rev. Stat. 1987, ch. 120, ¶¶511 & 524 ..... 3, 11

Ill. Rev. Stat. 1987, ch. 120, ¶643 4

Ill. Rev. Stat. 1987, ch. 120, ¶ 657 4

Ill. Rev. Stat. 1987, ch. 120, ¶¶675 & 716 2

Miscellaneous:

Cook County, Illinois, Real Property Assessment Classification Ordinances, §§ 2, 3 (1980) 3

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v.

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Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner is a condominium association comprising thirty-three homeowners and taxpayers in the County of Cook, Illinois. On behalf of its members, Petitioner brought a

tax objection[1] in the Circuit Court of Cook County challenging the assessments for the 1981 tax year upon the subject real estate, a thirty-three unit condominium development.

The development is located within Maine Township, one of thirty-eight townships into which Cook County is divided. Petitioner's objection contended that the subject property was assessed at a higher "assessment level" or percentage of market value than the average assessment level of other property in Petitioner's class, within Maine Township. Petitioner stipulated, however, that its objection would in no way address the assessment level of the other property in Petitioner's class in the other thirty-seven townships of Cook County outside of Maine.

The Illinois Constitution authorizes Cook County to classify real estate for purposes of property taxation. The relevant provision of the Illinois Constitution is Section 4(b) of Article IX, which provides in pertinent part:

> Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class.

* * *

[1] The Illinois tax objection procedure allows taxpayers to challenge their assessments in court after administrative remedies are exhausted. The disputed tax is paid under protest and is then refunded if the objection is successful. Ill. Rev. Stat. 1987, ch. 120, ¶¶675 and 716. This procedure is described in some detail in this Court's opinion in *Rosewell v. LaSalle National Bank*, 450 U.S. 506, 508-510, nn. 6-7 (1981), which held the tax objection to be a plain, speedy and efficient remedy for purposes of 28 U.S.C. §1341.

Ill. Const. 1970, Art. IX, §4(b). The Illinois General Assembly has provided that assessment classes under Section 4(b) must be established by ordinance of the county board. Ill. Rev. Stat. 1987, ch. 120, ¶501a.

Pursuant to this authority, Cook County has established an assessment system in which properties are classified according to type and use and are assessed for tax purposes at prescribed "levels of assessment" or percentages of market value. The subject real estate is categorized as Class II property and is assessed at sixteen percent (16%) of fair market value. Cook County Real Property Assessment Classification Ordinance §§2, 3 (1980). Class II contains farm property, single-family homes, apartment buildings of not more than six living units, and residential condominiums. *Id.* §2; see also, Ill. Rev. Stat. 1987, ch. 120, ¶501c-1 (owner-occupied condominiums to be classified with single-family residences). Class II property is located throughout the county.

Cook County is divided into four quadrants or assessment districts. Maine Township, in which the subject property is located, is part of the Northwest quadrant. All classes of property are reassessed in one of the quadrants each year in rotation, so that all property in the county is reassessed every four years. Ill. Rev. Stat. 1987, ch. 120, ¶¶511, 524.

In Cook County, county officials perform the ultimate acts of assessing, imposing, and collecting real estate taxes. The Cook County Assessor is the elected official responsible for assessing all real property in the county. Ill. Rev. Stat. 1987, ch. 120, ¶487. The county Board of (tax) Appeals, made up of two elected county officials, is responsible for reviewing real property assessments in Cook County. Ill. Rev. Stat. 1987, ch. 120, ¶492. Similarly, the Cook County Treasurer, the Respondent here, is

responsible for the collection of property taxes throughout the county. Ill. Rev. Stat. 1987, ch. 120, ¶657.

In the property tax system established under the Illinois Revenue Act, as in all *ad valorem* tax systems, each taxpayer's tax bill is computed by extending the tax levies of the various taxing bodies or districts against the assessments of property within those districts. See, *e.g.*, Ill. Rev. Stat. 1987, ch. 120, ¶643. Thus each taxpayer's share of the overall tax burden is determined by the assessed value of his property in relation to the assessed value of all other properties located within all the relevant taxing districts.

There are over 600 taxing districts in Cook County. The boundaries of these taxing bodies generally overlap township lines so that all taxpayers in Cook County pay real estate taxes to a number of different taxing authorities. This is best illustrated by reviewing the Petitioner's tax burden. The Petitioner pays real estate taxes to fifteen different taxing bodies. Only four of these bodies are located wholly within Maine Township. Three of the taxing bodies cover all townships outside the City of Chicago, and three more cover the entire county. In all, only thirty-one percent (31%) of the Petitioner's real estate tax burden is accounted for by Maine Township taxing bodies and the remaining sixty-nine percent (69%) is accounted for by taxing bodies extending beyond Maine Township's boundaries.

Petitioner proposed to offer studies claiming that its property's assessment level was greater than the true and actual average assessment level of other Class II property in Maine Township. The Petitioner made no allegation and expressly declined to offer any evidence concerning the level of assessment for Class II property throughout the county. The Respondent moved for summary judgment arguing that the appropriate geographic area for compar-

ing levels of assessment was the entire county and not any individual township. After a full hearing, the trial court ruled that the Petitioner must establish the county-wide level of assessment and granted the motion for summary judgment.

Contrary to Petitioner's contention "that the uncontradicted evidence is that the minimum cost of a county-wide study [of assessment levels] would be $17,000" (Pet. at 12, 14), the trial court did not have before it any evidence concerning the cost of a county-wide study. The $17,000 figure appears in the record only as the offhand comment of Petitioner's counsel, speculating on the cost of one of four county-wide studies produced by another taxpayer in another Cook County case. (Pet. App. D, at 72a) The Treasurer contradicted this speculation, pointing out that the cost of the *Class II* studies in the other case could not have been as high as Petitioner's figure. (Pet. App. D, at 85a-87a.) The trial court made no specific findings concerning the cost of a county-wide assessment study to this Petitioner or to anyone, nor any findings concerning Petitioner's ability to fund such a study.[2]

The Illinois Appellate Court affirmed the judgment for Respondent, finding that the Petitioner failed to show that its property was taxed disproportionately to the other Class II property throughout the county. *Rosewell v. Twin Manors West of Morton Grove Condominium Assn.*, 175 Ill.App.3d 564, 529 N.E.2d 1104 (1st Dist. 1988). The Petitioner's petition for leave to appeal was denied by the Illinois Supreme Court and the Petitioner filed a petition for certiorari.

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[2] Thus, the statement in the petition for certiorari that "The trial court granted the Collector's [Respondent's] motion for summary judgment because Petitioner did not have the $17,000 study" (Pet. at 14) misrepresents the record insofar as it implies such a finding.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED TO REVIEW PETITIONER'S CONSTITUTIONAL ARGUMENTS BASED ON THE SUPPOSED COST OF A STATISTICAL STUDY, WHERE PETITIONER FAILED TO PRESENT ANY EVIDENCE OF THE STUDY'S COST TO THE ILLINOIS COURTS, AND WHERE THOSE COURTS MADE NO SPECIFIC FINDINGS CONCERNING SUCH A COST.

Petitioner's constitutional contentions are based almost entirely on allegations in the petition for certiorari that the minimum cost of a statistical study showing the county-wide level of tax assessments for its class of property would be prohibitive. (*E.g.* Pet. at 9, 12, 14, 39) Petitioner argues that this cost precludes taxpayers who are not wealthy from challenging their tax assessments, in violation of equal protection and due process. (Pet. at 22-30) Petitioner's arguments are unfounded, but this Court need not reach them. Certiorari should be denied as a threshold matter, because the record in this case does not contain any evidence to support Petitioner's factual allegations concerning the cost of a county-wide statistical study of assessments within Petitioner's class ("Class II"). Furthermore, the record reveals that the Illinois courts did not make any specific findings or rulings concerning the cost of such a study.

Petitioner alleges that the "uncontradicted evidence" is that the "minimum cost of a county-wide study would be $17,000." (Pet. at 12) It further alleges that "The trial court granted the . . . [Respondent's] motion for summary judgment because Petitioner did not have the $17,000 study." (Pet. at 14) Petitioner further alleges that this

"$17,000 cost" is prohibitive to most taxpayers and that only the wealthy or large corporations can afford it. (Pet. at 27-28) The record in this case, however, reveals that no evidence was presented concerning these allegations, and that the trial court did not make the finding attributed to it.

The $17,000 figure appears in the record only as the offhand speculation of Petitioner's counsel, concerning the cost of one of several county-wide studies produced by another taxpayer in another case. (Pet. App. D, at 72a) The Respondent contradicted this speculation noting that the Class II studies in the other case used "canned" samples and could not have cost as much as Petitioner's figure. (Pet. App. D, at 85a-87a) There is a complete lack of evidence in the record to support Petitioner's allegation that a Class II study is cost-prohibitive to most taxpayers. Moreover, there is no specific evidence that it is cost-prohibitive to this Petitioner, an association of thirty-three taxpayers.

The record also discloses that the Illinois courts did not make any specific findings concerning the cost of a county-wide study. The trial court did note in its decision that a county-wide study would most likely cost more than a study limited to one township, and that such a cost might prohibit an "individual property owner" from pursuing a theory that other properties generally were under-assessed. (Pet. App. B, 34a-38a) But the trial court never made a finding as to what the cost of a county-wide Class II study would be, or that such a cost barred Petitioner and Illinois taxpayers generally from challenging their tax assessments. In particular, no finding of a "$17,000 cost" was made. (See, Pet. App. B, at 30a-41a.)

The Illinois Appellate Court also made no specific factual rulings on the cost of a county-wide study. The court noted in passing that "[Petitioner] contends that the burden on the taxpayer to show disproportionate assessment at the county level is too heavy." *Rosewell v. Twin Manors West of Morton Grove Condominium Assn.*, 175 Ill.App.3d 564, 568, 529 N.E.2d 1104 (1st Dist. 1988). It ruled, however, that:

> Even if it was unable to present a comprehensive study of countywide assessments of class 2 property, [Petitioner] might have produced some evidence of assessments of class 2 property within areas or townships in the county other than Maine Township.

Id., 175 Ill.App.3d at 573. Moreover, Petitioner neglected to include in its brief to the Illinois Appellate Court the allegations concerning "$17,000 cost" that it makes here.[3]

Respondent respectfully suggests that this Court apply its ordinary rule against deciding "questions not raised or litigated in the lower courts," *City of Springfield, Massachusetts v. Kibbe*, 480 U.S. 257, 259 (1987), and deny the petition for certiorari. This case is comparable to *Mishkin v. State of New York*, 383 U.S. 501 (1966), where this Court held that the appellant's questions concerning illegal searches and seizures were not presented by the record with sufficient clarity to require or justify review. 383 U.S. at 512-513. In *Mishkin*, the record disclosed a lack of evidence and findings by the lower courts in connection with the alleged illegal searches and seizures, and this Court accordingly dismissed a writ it had previously granted. *Id.* at 513.

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[3] The Illinois Supreme Court, the erroneous focus of the petition for certiorari, denied Petitioner ~~leave to~~ appeal. This was not a ruling on the merits concerning costs or any other issue.

The record in this case is similarly devoid of evidence and findings presenting Petitioner's constitutional contentions with sufficient clarity to justify this Court's review. Given the absence of clearly defined questions, this Court should deny the petition for writ of certiorari.

II.

THE REQUIREMENT THAT PETITIONER SHOW THE COUNTY-WIDE AVERAGE ASSESSMENT LEVEL TO SUPPORT ITS CLAIM OF DISCRIMINATION IS CONSISTENT WITH THE DOCTRINES OF DUE PROCESS AND EQUAL PROTECTION.

Respondent submits in the previous section of this brief that this Court should not accept review of Petitioner's equal protection and due process claims, because they turn upon arguments about the supposed cost of a statistical study which were not adequately litigated in the Illinois courts. Alternatively, Petitioner's claims must be rejected even if they are analyzed on their merits.

A. Requiring Evidence Appropriate To The Taxing Jurisdiction In Support Of A Claim Of Discrimination Is Consistent With The Rule Of Uniformity And Equal Protection In Property Tax Assessment.

The Illinois Appellate Court held in this case that for purposes of proving a violation of equal protection in real estate tax matters, the proper geographic area of comparison is the county and not an individual township. *Rosewell v. Twin Manors West of Morton Grove Condominium Assn.*, 175 Ill. App.3d 564, 529 N.E.2d 1104 (1st Dist. 1988). The court based its decision on the fact that both the Illinois Constitution and the Illinois Revenue Act provide for assessments to be made at the county level, such that assessments of property in Petitioner's class occur

throughout the county, as well as on the principle that practical rather than absolute uniformity and equality is the test.

Petitioner contends that it is unnecessary to establish the county-wide level of assessment to prove a violation of the Equal Protection Clause of the Fourteenth Amendment. Instead, Petitioner suggests that a violation of equal protection can be established by showing a spot disparity in apparent assessment valuation levels, limited to relatively small areas or pockets within the county such as a township. (Pet., at 30-38)[4] These contentions are refuted by this Court's previous rulings and by the undisputed facts of this case.

The broad latitude of the States in the area of taxation is well established. *E.g. Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359-60 (1973). In its most recent decision concerning real property taxation, this Court reinforced the settled law that assessment discrimination must be *intentional and systematic* in order to violate the Equal Protection Clause. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, ____ U.S. ____, 109 S.Ct. 633, 639 (1989). Intentional, systematic undervaluation of other property may violate equal protection if it subjects an individual to taxes not imposed on others of the same class. *Id.* at 639; see also, *Sunday Lake Iron Co. v. Wakefield Township*, 247 U.S. 350, 352-53 (1918). However, "occasional errors of

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[4] Although Petitioner also suggests that the rejection of its basic claim violated due process, this aspect of its argument appears to turn on Petitioner's belief that the equal protection violation was established "to a 99.95% certainty." (Pet., at 36-37, n. 10) Accordingly, this response is confined to Petitioner's equal protection analysis.

state law or mistakes in judgment in valuing property" are not enough. *Allegheny, supra*, 109 S.Ct. at 638. Reasonable division of property into classes with different tax burdens is not unconstitutional, nor is the application of different assessment methods to property in the same class. *Id.* at 637-38.

> In each case, the constitutional requirement is the *seasonable attainment* of a *rough equality* in tax treatment of similarly situated property owners.

Id. at 638 (emphasis added).

In *Allegheny* the parties stipulated to a deliberate assessment policy applied to all property in West Virginia's Webster County. It was effectively uncontested that this policy, applied to admittedly comparable properties, had produced huge disparities in assessments which would not be equalized absent judicial intervention for up to five hundred years. *Allegheny, supra*, 109 S.Ct. at 635-37. In the instant case, no such systematic policy nor system-wide result was even alleged, much less shown. Unlike Webster County, Cook County reassesses all property in all classes at least every four years. Ill. Rev. Stat. 1987, ch. 120, ¶524.

Moreover, Petitioner neither claimed nor offered evidence of discrimination favoring other property *in its class*, which is spread throughout Cook County. Instead Petitioner confined its claim and proposed evidence to an alleged statistical variation in that portion of its class located in one of thirty-eight townships. Such evidence was categorically incapable of showing that Petitioner was subjected to taxes "not imposed on others of the same class," since sixty-nine percent (69%) of Petitioner's tax burden was accounted for by properties outside the area which the evidence addressed. See, *Allegheny, supra*, 109

S.Ct. at 639, quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

The Illinois Appellate Court's decision in this case that the proper geographic area is the county as opposed to any one individual township is in accord with the rulings of this Court that "the constitutional requirement is the *seasonable attainment* of a *rough equality*." *Allegheny*, *supra*, 109 S.Ct. at 638 (emphasis supplied). Practical uniformity or rough equality of assessment levels can exist throughout the county even though there might be a spot disparity in assessment levels within one individual township. Allowing taxpayers to rely on a mere showing of spot disparity would soon lead to chaos in the attainment of practical assessment uniformity. Assessment levels would be measured on a pocket-by-pocket basis until the county was reduced to a patchwork of pockets (townships) all with different assessment levels. This is especially true in a taxing jurisdiction like Cook County where property owners pay taxes to numerous different taxing districts which generally overlap township lines.

Other decisions of this Court further support the use of a county-wide level of assessment, reflecting the fact that counties are relatively typical assessment jurisdictions. In *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350 (1918), this Court compared the complaining taxpayer's assessment level to "other lands *within the county*." 247 U.S. at 353 (emphasis supplied). Similarly in *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441 (1923), reference is made to the allegation that the plaintiff's property was being assessed at 100 per cent of its true value while all other real estate *in the county* was being assessed at 55 per cent of its true value. On the other hand, Petitioner's contention that it would be sufficient to show a spot disparity within an assessment jurisdiction, such as a township disparity within a county, is without precedent.

Petitioner is apparently urging this Court to attempt to change the constitutional requirement to one of precise mathematical uniformity in tax assessment, while ignoring that the practical result of its approach would be disuniformity. For the reasons articulated in virtually all of this Court's decisions concerning equality in taxation, Petitioner's suggestion should be rejected.

B. Petitioner's Argument That Due Process And Equal Protection Should Allow It To Prove Assessment Discrimination With Less Evidence Than That Required Of Other Taxpayers Is Without Merit.

Petitioner's main argument is that requiring it to provide county-wide evidence of a statistical disparity in assessment levels within its class of property violates the Equal Protection and Due Process Clauses, because of the supposed cost of the evidence. (Pet., at 26-30, 22-26) This argument rests on two premises, both of which are insupportable. First, Petitioner assumes its conclusion that it is even possible to make out an assessment discrimination claim based on statistics for a small fraction of the assessment jurisdiction and class of property. Second, Petitioner argues that in rejecting such a fractional discrimination theory, Illinois has made it "utterly impossible" for taxpayers other than "the wealthy or large corporations with substantial taxes at risk" to prove that (the assumed) discrimination has occurred.

Contrary to Petitioner's apparent theory, this Court has rejected the notion that statutes "having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny." *Kadrmas v. Dickinson Public Schools*, ___ U.S. ___, 108 S.Ct. 2481, 2487 (1988). The Illinois courts' interpretation of Cook County's statutory assessment scheme should fare

no differently. Unless a statutory scheme interferes with a "fundamental right" or discriminates against a "suspect class," it will be upheld if a rational basis for the legislative classifications exists.[5] *Kadrmas, supra*, 108 S.Ct. at 2487. And as noted above, the States' latitude in the area of taxation is particularly broad. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359-60 (1973); *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, ____ U.S. ____, 109 S.Ct. 633 (1989); *supra*, part II.A.

Petitioner's due process analysis similarly lacks foundation. It argues that requiring statistical evidence of claimed assessment discrimination to address the entire assessment class and jurisdiction interferes with its right of "access" to the courts. (Pet., at 22-23, citing *Boddie v. State of Connecticut*, 401 U.S. 371 (1971), and *Little v. Streater*, 452 U.S. 1 (1981).) Nothing about Petitioner's claim or the Illinois courts' response to it involves access to the judicial process in the sense of *Boddie* or *Streater*.

Petitioner's tax objection was denied following a hearing on the legal issue raised by its limitation of the proposed assessment level evidence to the property within a township. Nothing in this adjudication remotely resembles the filing fee at issue in *Boddie v. State of Connecticut*, 401 U.S. 371 (1971), which precluded anyone who could not afford to pay from seeking a divorce in the first instance. Moreover, this Court's ruling that due process was violated rested on the fundamental character of the

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[5] Petitioner's reliance on *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) is obviously misplaced in this regard. (See Pet., at 29.) The Court's analysis in *Harper* rests firmly on the distinctive character of the right to vote as "fundamental." *Id.* at 670.

marital relationship and the State's monopolization of the means of dissolving it through the courts. *Boddie*, *supra*, 401 U.S. at 382-83. In subsequent cases the Court has declined to extend the rule of *Boddie* to fees required as a prerequisite to seeking discharge in bankruptcy, *U.S. v. Kras*, 409 U.S. 445 (1973), or to fees required as a prerequisite to appealing the denial of welfare benefits, *Ortwein v. Schwab*, 410 U.S. 656 (1973). Petitioner's interest in its tax reduction is much more similar to the financial interests in *Kras* and *Ortwein* than to the marital relationship in *Boddie*.

Petitioner's reliance on *Little v. Streater*, 452 U.S. 1 (1981), is similarly misplaced. There, this Court overturned a rule requiring indigent defendants in paternity actions to bear the cost of blood tests which might disprove paternity. The Court relied on the importance of the private interests at stake; an unusual provision of Connecticut law making it impossible to defeat a prima facie claim of paternity by the defendant's testimony; and the unusually conclusive character of blood test evidence, in holding that the State must pay for the test in cases of indigency. To hold otherwise, the Court concluded, raised a serious risk of erroneous adjudications and denied indigent defendants a meaningful opportunity to be heard. *Streater*, 452 U.S. at 12-17. Again, neither the interests asserted by the Petitioner here nor the results of the ruling it attacks resemble those in *Streater*.

More fundamentally, however, neither *Boddie* nor *Streater* nor any reported decision approaches a constitutional theory such as Petitioner advances here. Petitioner does not merely propose that the evidentiary costs of which it complains be shifted from it. Rather, Petitioner's theory is that the substantive law governing its claim, in this instance a claim of discrimination, must be

altered to obviate the need for the supposedly costly evidence. Respondent respectfully suggests that no decision of this Court even remotely supports thus changing the law to suit the litigant.

CONCLUSION

For the foregoing reasons, Respondent prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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